

**NOTICE OF INTENT
STATEMENT OF CONSIDERATION RELATING TO:
401 KAR 5:072**

Notice of Intent Public Hearings Conducted
March 28, 2000, 6:30p.m., Western Hills High School, Frankfort, Kentucky, and
March 30, 2000, 6:30p.m., Byrnes Auditorium, Madisonville, Kentucky

by the
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Water

PREFACE

On February 14, 2000, the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water submitted a Notice of Intent to Promulgate an Administrative Regulation to the Regulations Compiler for publication in the March *Administrative Register of Kentucky*. Public hearings to receive comments on the Notice of Intent for this administrative regulation were conducted March 28, 2000, at 6:30 p.m. at the Western Hills High School, 100 Doctors Drive, Frankfort, Kentucky and March 30, 2000, at 6:30 p.m. at the Madisonville Technology Center Byrnes Auditorium in Madisonville, Kentucky.

Pursuant to KRS 13A.017, this Notice of Intent Statement of Consideration document is submitted to the Legislative Research Commission within forty-five days after the public hearings. This document contains listings of the persons attending the public hearings and persons submitting comments at the hearings or in writing, as well as summaries of the comments received and the Cabinet's responses to those comments. Finally, a Summary of the Notice of Intent Statement of Consideration is included at the end of this document. In addition to filing the Notice of Intent Statement of Consideration, the Cabinet is filing the proposed new administrative regulation that is the subject of the Notice of Intent.

The proposed administrative regulation will be published in the June *Administrative Register of Kentucky (Register)* and will be the subject of a public hearing June 29, 6:30p.m. Central Standard Time at the Madisonville Technology Center Byrnes Auditorium, 750 North Lafoon Drive, Madisonville, Kentucky.

(1) Two public hearings regarding the notice of intent to promulgate the administrative regulation listed above were held on March 28, 2000, at 6:30 p.m. at the Western Hills High School, 100 Doctors Drive, Frankfort, Kentucky and March 30, 2000, at 6:30 p.m. at the Madisonville Technology Center in Madisonville, Kentucky.

(2) The following people attended these public hearings:

<u>Name and Title</u>	<u>Affiliation</u>
Debby Allen	KFTC
Charles Anderson	Citizen
Ronnie Ashburn	Citizen
Stacy Ashby	Perdue Farms – Livermore Feedmill
Terry Ashby	Perdue Farms
Phillip R. and Elaine Atherton	Tyson
Lisa Ayer	McLean County Career Center
Todd Barlow	KY Corn Growers Association
Ray Barry	KY Conservation Committee
Lillian Beattie	Citizen
David S. Beck	Citizen
Gloria & Randy Benham	Poultry Growers
Betsy Bennett	Sierra Club
Andrew Bird	Anderson County Farm Bureau
Jimmy R. Blakeley	Farmer
Raye Ann Blakeley	Farmer
Mike Bonner	Tyson Foods
Kimberly Boswell	Poultry Producer
Pamela Bratcher	Citizen
Mike Brawner	Citizen
Doug Brown	Citizen
Joseph Bruce	Tyson Foods
Donald R. Buckingham	Grower, Tyson Foods
Loraine Buckingham	Poultry Grower, Tyson Foods
Lori & Marc Burnett	Grower-Producers, Cagles-Keystone
Micah Busbey	Tyson Foods
Nancy Butler	Contract Producer
Shane Butler	Perdue
Elwood & Gaile Butrum	Poultry Producers
Norma Caine	Citizen
Eldon Calebs	Farmer
Sherrell Calhoun	Calhoun Feed Service
Vince Calloway	Citizen
Judy Carlisle	Poultry
Angel Carlisle	Poultry
Allen Chambers	Tyson Foods
Richard Chapman	Cal-Maine Foods

Jason Chinn
John K. Chlada
Dennis Clapp
Chris Clark
Jeff Cobb
Dudley Cooper
Nell Cox
Marshall Coyle
Carla Creasey
Chris Creech
Lloyd R. Cress
Susan Crosswait
Earl & Ann Cunningham
Carolyn Dant
David Dennis
James Denton
Joan Denton
Aloma & Lee Dew
John Donaldson
Joe Duckworth
James Duff
Donnie Duncan
William Duncan
Shawn Dunn
Margie Durham
Sandra Dupree
Richard Dutton
Ron Duvall
John Ebelhar
Bernadine Edwards
Ruby Eikermann
Terry Eikermann
Jeff Everly
Woody Everly
Terry Fain
Tim Faulkner
Tom FitzGerald
Dan Flanagan
Melissa Forbes & William Tidwell
Rebeckah Freeman
John Fretwell
Teresa Fuller
Sam Gilkey
Patricia & Claudie Gish
Claude Gish
John Gore

Ohio County Property Valuation
Perdue Farms
Poultry
Citizen
Poultry Grower
Ohio County Judge Executive
Nell Cox Productions
KY Farm Bureau
Citizen
Perdue Farms
Greenebaum, Doll & McDonald
KFTC
Citizen
MCCAFF
KY Farm Bureau
Faith Farms
KFTC
Sierra Club
Fairfield Poultry
Tyson Foods
Perdue Farms
Farmer
Farmer
Tyson Foods
Citizen
Citizen
Tyson Foods
Cagle-Keystone
Citizen
MCAFF
Tyson Foods
Tyson Foods
Citizen
Perdue Farms
Poultry
Tyson Foods
KY Resources Council
Citizen
Buchaman Livestock
KY Farm Bureau
Cagles-Keystone Foods
Citizen
The Messenger
Citizens
Poultry Grower
Producer, Perdue Farms

Hank Graddy
Cindy & Richard Greer
Stephen R. Guthrie
Nile Harper
Jimmy Harris
Doug Hartline
Joan & Mel Harvey
Martin J. Hayden
Patricia Hawkins
Greg Henson
Tom Henry
Daniel Herron
Winnie Hepler
Teddy Hicks
Morris Hill
Bud Hixson
B.J. Hobgood
Chad Hobgood
Bill & Dot Holbrook
Jerry Hobgood
Larry Hooper
Judy Hopper
Rick Householder
Marvin Howard
Lynde Hughes
Michael Hughes
Tim Hughes
Chris Igleheart
Dr. Kazi Javed, Professor
Shane Jayner
Michael Johnson
David G. Jurgons
George & Rita Kelley
Steve Vey
Josh Kirkland
Ed Kipling
Carole Knoblett
Joe Knoepfler
Jim Koostra
Louis & Norma Kost
Kelly Lamb
Mike Latta
Angela & Ronnie Leach
Crystal & Kenneth Lee
J. Lindop
Ira Linville

Sierra Club
Producer, Tyson Foods
Farmer, Cagle-Keystone
BT & R Farms
Perdue Farms
Farmer, Tyson Foods
Pleasant Hill Livestock Co. Inc.
Perdue & KY Cattle Association
Magistrate - Hopkins County
University of Kentucky
Poultry Farmer
Poultry Farmer, Tyson Foods
Citizen
Farmer, Cagle-Keystone
Tyson Foods
KY Waterways Alliance
Farmer
Farmer
Citizens
Citizen
Perdue Farms
Buchanan Livestock Inc.
Mayor, City of Clay
Poultry Farmer
Perdue Farms
Tyson Foods
TLC Farms
Grower
Kentucky State University
Tyson Foods
Farmer, Perdue
Perdue Farms
Growers, Tyson
Tyson Foods
Citizen
Kipling Farm
KY Poultry Federation
Citizen
Farmer
Citizens
Tyson Foods
Poultry Grower
Citizens
Citizens
Sierra Club
KY Department of Agriculture

Dennis O. Liptrap	Citizen
John Litkenhus	Farmer
Jerry Lock	Poultry Producer
Muriel Lock	Citizen
Cathy Lowe	Tyson
D. Mark Lyle	KY Farm Bureau
Kathy Lyons	Citizen
Carlton Magan	Farm Credit Services
Jason Magan	Citizen
Heather Roe Mahoney	Democracy Resource Center
Pat Martin	CFA
Andy & Pat Martinez	Poultry Growers, Tyson Foods
Diana Maxwell	Citizen
David McCollough	Farm Credit Services
Howard McGregor	McGregor Orchards
Tracy McKenney	Poultry
Charles Miller	KY Cattlemen's Association
Rob Miller	Perdue Farms
Ralph Mitchell	Perdue Farms
Lee Moore	Tyson Foods
Sam Moore	KY Farm Bureau
Fannie Morris	Kentuckians for the Commonwealth (KFTC)
Jennifer Nelson	Citizen
Joe Nepi	DOE Valley POA
Michael Newman	Citizen
Jim O'Malley	Citizen
Al & Linda O'Reilly	Farmers
Norma & Roger Osburn	Farmers
Doug Overhults	University of Kentucky
Mike Ovesen	Ag Water Quality Authority
David A. Owen	Greenebaum, Doll & McDonald
Mike Parrish	Tyson Foods
Bill Payne	KY Milk Producers Association
Danny & Onda Payne	Growers, Tyson Foods
Lance Paulsen	Perdue Grower
Al Pedigo	Farmer
Dr. Anthony Pescatore	University of Kentucky
Billy Peters, Jr.	Tyson Foods Grower
Allen H. Phillips	Farmer
William D. Phillips	Tyson Foods
Sam Poe	Tyson Foods
Stephen Potts	Perdue Farms
John Porter	KFTC
Charlene Powell	Tyson Foods
Jeff Power	Tyson Foods
Kate Preskenis	KFTC

Glenda Preston
Ron Prouse
Ronny Pryor
Logan Puckett
Burrell Rankin
Monroe Rasnake
Gini Renfrow
Gene Reynolds
Christopher Rhodes
Terry Rhodes
James Rich
Ann Richardson
Barry Rickard
Morgan Rickard
Myrtle Rickard
Brian Riley
Ben Riggs
Dee Dee Ringo
Beverly Roberts
Henry Robinson
Alan D. Rodgers
Mr. & Mrs. Joe Rogers
Sue Anne Salmon
Alvin Sandefur
Bill Sandefur
Bill Sandler
Peggy Scott
Charles Shocklee
John & Rickie Shocklee
Roger Shocklee
Tony Sholar
Dr. Richard Shore
Cliff Shoulder
Dorothy Shoulders
Wesley Simpson
Johnnie & C. Slaton
Michelle & Wesley Slaton
Thurman Slaton
Billy Ray Smith, Commissioner
Paul Smith
Phillip Smith
Joseph Stanley
John Stevenson
Chetan Talwalkar
Phillip Tapp
Hollis Teague

Poultry Producer
Cagles-Keystone Foods
KY Poultry Federation
Farmer, Tyson Foods
Tyson Foods
University of Kentucky
Perdue
Grower
Tyson Foods
KY Corn Growers Association
Tyson Foods
Grower, Real Estate Broker
Producer, Perdue
Grower
Producer, Perdue
Citizen
Riggs Farm
Citizen
Citizen
Farmer
Perdue Farms
Citizens
Citizen
Citizen
Farmer
Citizen
Citizen
Farmer
Farmers
Farmer
KY Chamber of Commerce
KY Conservation Committee
Farmer
KFTC
Tyson Foods
Poultry Farmers
Poultry Farmers
Farmer
KY Department of Agriculture
Buchanan Livestock Inc.
Tyson Foods
KY Milk Producers
KY Cattlemen's Association
Democracy Resource Center
Citizen
Poultry Grower

William & Donna Threlkeld
 Barbara Thomas
 Doug Thomas
 Deborah Throgmorton
 Gene Tichsnan
 James & Kathryn Tompkins
 Jean True
 Mark Turner
 Kenny Underwood
 Chris Underwood
 Dr. Scott Vanderploes
 Melody Vaught
 Judith Villines
 Amy & Joe Walker
 William Walker
 Suzanne Walters
 John Warren
 Sherry Watts
 Mark Weathers
 Leesa Webster
 Mr. & Mrs. William Wedding
 Thomas Wehrenberg
 Karol Welch
 Sue Whyane
 Coletta Wheeler
 Nancy Wheeler
 Andrea Whitaker
 Barbara Whitledge
 Jerry Whitledge
 Pat & Stephen Whitledge
 Rick Whobrey
 Ann Wilkerson
 Jay Wilkerson
 Mike Williams
 Rick Williams
 Tim Wilson
 Frances Woosley
 Wilson Workman
 Todd Wright
 Stephanie Wright
 Ron Zavitz
 Steve Zea

Citizens
 McLean Co. Citizens Against Factory Farms
 KY Department of Agriculture
 Citizen
 Citizen
 Farmers, Citizens
 KFTC Hopkins Chapter Member
 Farmer
 Grower, Tyson Foods
 Citizen
 Citizen
 Poultry Farmer
 Stites and Harbison
 Poultry Farmers
 Poultry Farmer
 Community Farm Alliance
 Grower, Tyson
 Buchanan Livestock, Inc.
 Tyson Foods
 Citizen
 Citizens
 Tyson Foods
 Magistrate
 Citizen
 Hopkins Co. Magistrate
 KY Farm Bureau
 Polaris Assoc.
 Grower, Tyson Foods
 Poultry Farmer
 Citizens
 KY Farm Bureau
 KFTC
 Citizen
 Grower
 Perdue Contract Grower
 Poultry
 Perdue Farmer
 Poultry Grower
 Tyson Foods
 Citizen
 PRO-TEK Environmental Management
 West Ky Corporation

(3) The following persons submitted oral or written comments regarding the administrative regulations:

Name and Title

Debby Allen
Charles Anderson
Lisa Ayer
Ray Barry
Kimberly Boswell
Mike Brawner
Loraine Buckingham
Nancy Butler
Elwood Butrum
Norma Caine
Jason Chinn
Dudley Cooper
Marshall Coyle
Carla Creasey
Lloyd R. Cress
Susan Crosswait
Earl Cunningham
Sue Dant
James Denton
Joan Denton
Aloma Dew
John Donaldson
Pennie DuBarry
James Duff
Donnie Duncan
Bernadine Edwards
Tom FitzGerald
Rebeckah Freeman
Hank Graddy
Stephen R. Guthrie
Joan & Mel Harvey
Greg Hefton
Greg Henson
Winnie Hepler
Teddy Hicks
Raymond Highball
Bud Hixson
Dot Holbrook
Jerry Hobgood
Rick Householder
Tim Hughes
Carole Knoblett
Joe Knoepfler
Jim Koostra
Mike Latta

Affiliation

KFTC
Citizen
McLean County Career Center
KY Conservation Committee
Poultry Producer
Citizen
Poultry Grower, Tyson Foods
Contract Producer
Poultry Producer
Citizen
Ohio County Property Valuation
Ohio County Judge Executive
KY Farm Bureau
Citizen
Greenebaum Doll & McDonald
KFTC
Citizen
Farmer
Faith Farms
KFTC
Sierra Club
Fairfield Poultry
Citizen
Perdue Farms
Farmer
McLean Co. Citizens Against Factory Farms
KY Resources Council
KY Farm Bureau
Sierra Club
Farmer, Cagle-Keystone
Pleasant Hill Livestock Co. Inc.
Poultry Farmer
University of Kentucky
Citizen
Farmer, Cagle-Keystone
Lender
KY Waterways Alliance
Citizens
Citizen
Mayor, City of Clay
TLC Farms
KY Poultry Federation
Citizen
Farmer
Poultry Grower

Angela Leach	Citizen
Crystal Lee	Citizen
William Douglas Lewis, Sr.	Poultry Farmer
Ira Linville	KY Department of Agriculture
Dennis O. Liptrap	Citizen
Jerry Lock	Poultry Producer
Alan Lutz	Farmer
Kathy Lyons	Citizen
Heather Roe Mahoney	Democracy Resource Center
Richard Mattingly	Poultry Farmer
David McCollough	Farm Credit Services
Bernie Miller	Citizen
Charles Miller	KY Cattlemen's Association
Sam Moore	KY Farm Bureau
Thomas E. Moseley	Citizen
Liz Natter	Democracy Resource Center
Jennifer Nelson	Citizen
Joe Nepi	DOE Valley POA
Norma Osburn	Farmer
Roger Osburn	Farmer
Mike Ovesen	Ag Water Quality Authority
Danny Payne	Citizen
Bill Payne	KY Milk Producers Association
Al Pedigo	Farmer
Dr. Anthony Pescatore	University of Kentucky
Glenda Preston	Poultry Producer
Ron Prouse	Cagles-Keystone Foods
Monroe Rasnake	University of Kentucky
Mark Redding	KY Pork Producers Association
Norma Reynolds	Citizen
Terry Rhodes	KY Corn Growers Association
Ann Richardson	Grower, Real Estate Broker
Sue Anne Salmon	Citizen
Alvin Sandefur	Citizen
John D. Shocklee	Farmer
Tony Sholar	KY Chamber of Commerce
Dr. Richard Shore	KY Conservation Committee
Wesley Slaton	Farmer
Billy Ray Smith, Commissioner	KY Department of Agriculture
Phillip Smith	Tyson Foods
Chetan Talwalkar	Democracy Resource Center
Barbara Thomas	McLean Co. Citizens Against Factory Farms
Pat Thompson	Citizen
Jean True	KFTC Hopkins Chapter Member
Mark Turner	Farmer
Judith Villines	Stites and Harbison / Perdue Farms

Judith Villines
 Joe Walker
 William Walker
 Suzanne Walters
 John Warren
 Karol Welch
 Sue Whayne
 Corrine Whitehead
 Jerry Whitledge
 Ann Wilkerson
 Rick Williams
 Patty Wilson
 Frances Woosley
 Todd Wright
 Steve Zea

Stites and Harbison / Tyson Foods, Inc.
 Poultry Farmer
 Poultry Farmer
 Community Farm Alliance
 Grower, Tyson
 Magistrate
 Citizen
 Coalition for Health Concern
 Poultry Farmer
 KFTC
 Perdue Contract Grower
 Citizen
 Perdue Farmer
 Tyson Foods
 West Ky Corporation

(4) The following people from the promulgating administrative body attended the public hearing(s):

Name and Title

Affiliation

*Agency Representative

*Jack Wilson, Director
 Robert Ware, Assistant Director
 Bruce Scott, KPDES Branch Manager
 Doug Allgeier, Supervisor, KPDES Industrial
 Section
 Julie Duncan, Division Secretary
 Brenda Lowe, Attorney
 Sherry Pryor, Regulations Coordinator
 Juanita Toole, Court Reporter
 Mary Stephens, Attorney

Division of Water
 Division of Water
 Division of Water
 Division of Water
 Division of Water
 Office of Legal Services
 Division of Water
 Court Reporter
 Office of Legal Services

SUMMARY OF COMMENTS AND RESPONSES

(1) Subject: Emergency

- (a) Comment: Mark Turner, Farmer
Mike Latta, Poultry Farmer
Kimberly Boswell, Poultry Farmer
Terry Rhodes, President, Kentucky Corn Growers Association
Angela Leach, Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Loraine Buckingham, Farmer
Mark Redding, President, Kentucky Pork Producers Association
Spence Jarnagin, General Manager, ConAgra Poultry Company
David Herron, Pilot & Poultry Farmer
Ronnie Bloecher, Poultry Farmer

What is the emergency? There is no evidence that any livestock or poultry operation in this state threatens public health, safety or welfare, or the environment. Emergency regulations are not necessary to prevent a loss of federal funds or meet a deadline for the promulgation of administrative regulations. It is inconsistent for the Cabinet to claim that an emergency exists if setbacks do not apply to existing operations. Using examples from Kentucky, explain the need for the emergency regulation.

(b) Response: The Statement of Emergency was declared by Governor Paul Patton on February 11, 2000. Upon the investigation of the growth in the pork, poultry, beef, and dairy industries in Kentucky, the determination was made that there are potential environmental impacts. Governor Patton ordered the Natural Resources and Environmental Protection Cabinet to develop the emergency regulation to protect human health and the environment. There are waters in Kentucky with moderate to significant water quality impairment attributed to agriculture impacts. The *1998 Kentucky Report to Congress on Water Quality* provides the Division of Water's most recent assessment of water quality conditions and trends. Agriculture continues to be a significant source of nonsupport of beneficial waterbody use. For those waters assessed in the 1998 report, agricultural nonpoint source pollution was the attributed cause of nonsupport in 984 miles of streams and 5,582 acres of lakes in Kentucky. The Cabinet maintains that this administrative regulation is an integral part of addressing the water quality problems remaining in Kentucky's waterbodies.

(2) Subject: Emergency

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club
The Sierra Club agrees that an emergency exists. The development of intensive livestock and poultry production on feed lots and in modern buildings has created massive concentrations of manure in small areas. The recycling capacity of the soil and plant cover has been surpassed. We need a system to deal with industrial scale operations before we are over run by them. Kentucky has so far avoided the problems of North Carolina and Oklahoma, but we have remained a prime target for industrial poultry expansion and we have not responded until last month. That is our emergency.

(b) Response: The concurrence is noted.

(3) Subject: Need for Regulations

(a) Comment: Jim Koostra, Farmer

Why do we need regulations? What are the scientific research studies that have been used to make these regulations?

(b) Response: See response to comment #1. The Cabinet has determined that agriculture operations contribute to water quality degradation. In February 1998, the Clean Water Action Plan (CWAP) identified polluted runoff as the most important remaining source of water pollution. The CWAP calls for the development of a USDA-EPA unified national strategy to minimize the water quality and public health impacts of animal feeding operations. This strategy was published on March 9, 1999 and includes the elements being implemented by the Cabinet in the proposed administrative regulation and the proposed CAFO General KPDES permits.

The Cabinet recognizes the many issues associated with concentrated animal feeding operations, including water pollution, odor, disease, land values, etc. With those in mind, the Cabinet used all the resources available to it to determine what setback distances would be reasonable to protect both human health and the environment. The Cabinet used various air dispersion models, risk information, and other research tools to evaluate the potential odor, air toxics, pathogen, and airborne health impacts from these operations. The setback distances represent the result of that research. The Cabinet maintains that these values are reasonable to protect those concerns that the Cabinet is mandated to protect. Any other concerns will need to be addressed by other state agencies or the General Assembly.

(4) Subject: Need for Regulations

(a) Comment: Mike Latta, Poultry Farmer

Why are outsiders with no financial stake poking into our business?

(b) Response: See responses to comments #1 and #3.

(5) Subject: Need for Regulations

(a) Comment: Earl Cunningham

Thomas E. Moseley

Crystal Lee, Citizen

Pat Thompson

Regulations are needed. We have got to do something about the odor. People can no longer spend time outdoors enjoying their property. Dust, feathers and flies are also a problem. A 600 acre operation that is worth half a million dollars can't be sold now because it is half a mile down the road from a chicken house. A planned retirement home now faces 16 poultry houses. Residents must keep windows closed and air conditioners on just to breathe.

(b) Response: The concurrence is noted.

(6) Subject: Need for Regulations

(a) Comment: Debby Allen

Barbara Thomas, McLean County Citizens Against Factory Farms

Corrine Whitehead, Coalition for Health Concern

I am in support of the CAFO regulations so that we and the next generation have clean drinking water, breathable air, and quality of life. We must have strong regulations to protect citizens and small farmers. We should educate our citizens and learn from the mistakes of other states. October 2001 is not soon enough.

(b) Response: The concurrence is noted.

(7) Subject: Need for Regulations

(a) Joe Knoepfler

I want to thank NREPC for the regulations. Cumberland County enacted a conservative and protective ordinance to regulate the industry. The ordinance is now the subject of a legal proceeding and if the ordinance fails, we will be protected by the regulations promulgated by the Cabinet. Those living near a broiler house will find their lives disrupted by the stench, flies, and the damage to our ground and water resulting from the effects of over nutrification.

(b) Response: The concurrence is noted.

(8) Subject: Incomplete Review

(a) Comment: Bud Hixson, Kentucky Waterways Alliance

The proposed 401 KAR 5:072E does not go far enough and will not achieve the environmental protection responsibilities of the Cabinet because they are based on an incomplete review of the problem. The Cabinet doesn't know how many poultry houses are out there, and it is reluctant to find out because of the implications for adequate rules to manage the mass balance of phosphorus and other nutrients in Kentucky's western and southern watersheds. The actual number of confined poultry operations must be collected and better reporting of manure production storage and use must be required.

(b) Response: The Cabinet disagrees that the issue has not been fully reviewed and has determined that the proposed regulation is protective of the environment. The Cabinet has inventoried approximately 425 poultry operations thus far. This compares favorably with Kentucky Poultry Federation estimates (500+) of the number of poultry growers in Kentucky. Where the Cabinet has not located some operations, those are expected to be either smaller growers or growers that recently went into operation. The Cabinet will continue to inventory the number of poultry CAFOs as the permitting process evolves.

(9) Subject: Threat to Environment and Public Health

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

Two poultry barns located in our residential area, within a few hundred yards of our fresh drinking water lake. This is a dangerous location above fresh water streams and flanked by two streams that feed the lake. The waste will be sold to neighboring farms for fertilizer, where it will run off mostly within our watershed. Carcasses will be incinerated on site. This industry poses a threat to the health and welfare of residents, fish, wildlife, air quality, and our drinking water source. The industry has failed in the past to protect the environment and public health and should be regulated as an industrial, not an agricultural operation.

(b) Response: The emergency and proposed regulations address operations which are defined as CAFOs, which generally confine 1,000 animal units or greater. According to the present definitions, the described operation qualifies as an animal feeding operation and should be regulated as such. Whether the operation is considered a factory farm is not an issue in the regulation. The Cabinet is concerned about the environmental impacts of a facility.

(10) Subject: Threat to Environment and Public Health

(a) Comment: Richard E. Shore, Ph.D., Legislative Agent, Kentucky Conservation Committee

Aloma Dew, Sierra Club
Pennie A. DuBarry, Citizen
Patty Wilson
Sue Whayne
Liz Natter, Director, Democracy Resource Center

The regulation of industrial animal factories is extremely important. Litter and liquids from CAFOs contain nutrients, hormones, antibiotics and disease organisms that may move into surface or subsurface waters. Neighbors and those living downstream must be protected from diseases spread by these facilities and the health effects and devaluation of property caused by odors. We support standards that apply both to swine and poultry, strong integrator liability, protective siting requirements, density requirements for poultry houses, and individual permits.

(b) Response: The concurrence is noted. The proposed regulation does not contain specific density requirements for poultry houses, but this will be indirectly controlled by siting requirements.

(11) Subject: Threat to Environment and Public Health

(a) Comment: Corrine Whitehead, Coalition for Health Concern

The management of manure by requiring sewage treatment facilities comparable to that of cities must be required. The use of antibiotics, steroids, medications, and vaccination materials for cholera, septicemia, and other animal sicknesses must not be allowed to contaminate our water wells, lakes and rivers. The illnesses now resistant to well known antibiotics is attributed to the use of those medications in hog and chicken factories by researchers. Humans are now left with almost no workable antibiotics.

(b) Response: The Cabinet disagrees that a conventional municipal “wastewater treatment plant” should be mandated for manure management. This would preclude the beneficial reuse of the manure.

(12) Subject: Threat to Environment and Public Health

(a) Comment: Winnie Hepler

Water pollution attributed to U.S. agriculture, including run off of soil, pesticides, and manure is greater than all municipal and industrial waste sources combined, according to the 1990 National Cattlemen’s Association Report. Livestock production accounts for more than half of all water consumed for all purposes in the United States. Regulate the factory farms to the highest degree in order to fully protect our society, water, soil and animals.

(b) Response: See response to comment #9.

(13) Subject: Threat to Environment and Public Health

(a) Comment: Chetan Talwalker, Democracy Resource Center

Karol Welch, Magistrate, Hopkins County
Kathy Lyons
Crystal Lee, Citizen
Patty Wilson
Corrine Whitehead, Coalition for Health Concern
Liz Natter, Director, Democracy Resource Center

The odor from factory hog and chicken operations is nauseating and at times makes one’s throat burn for days. People don’t even want to be outside. Children waiting for the school bus have

become sick on mornings when the air is still. A nine year old boy cannot play in his yard which is over a mile from a series of chicken barns, because it makes him sick. Residents may use their yards only when the wind is right. Children at a Hopkins County school stick tissues up their noses to stop the odor. The children do not want to go outside for recess because the odor is stronger and sometimes makes some vomit and others sick to their stomach for the rest of the day. The students want relief from this burden. Several local people already have Histoplasmosis from cleaning out chicken houses when they were children. Pfiesteria is another disease that can occur from factory hog farm run off. 401 KAR 5:072 provides a good starting point for developing CAFO regulations.

(b) Response: The concurrence is noted. Public health impacts from pfiesteria have been documented in other states. However, the Cabinet has not received any information that would indicate that Kentucky waterways are susceptible to pfiesteria. Pfiesteria and pfiesteria-like dinoflagellates are marine organisms found in coastal waters and estuaries, rather than inland freshwaters.

(14) Subject: Threat to Environment and Public Health

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club
The livestock and poultry industries are required to prevent waste generated in concentrated areas from causing serious harm to surface and ground waters. A system designed to handle the waste from a diverse, decentralized pasture based livestock system is inadequate to handle waste from an industrial system.

(b) Response: The comment is noted. See responses to comments #11 and #9.

(15) Subject: Threat to Environment and Public Health

(a) Comment: Loraine Buckingham, Resident & Poultry Farmer
There are a lot of groundwater concerns. Nature is a great purifier. If you are truly concerned about your water supply, contact your local health department to test your water.

(b) Response: Proposed siting criteria in combination with an appropriate general or individual KPDES permit is intended to protect groundwater resources.

(16) Subject: Threat to Environment and Public Health

(a) Comment: Bernadine Edwards, Resident
Eight chicken houses were constructed in front of my house. Trees were bulldozed down and set afire. The smoke affected my husband, who suffered from emphysema. Manure is hauled out on the weekends, preventing me and my children and grandchildren from being able to enjoy the outdoors on our property.

(b) Response: The specific concerns related to when manure is hauled and smoke related to burning trees are outside the jurisdiction of the proposed administrative regulation.

(17) Subject: Threat to Environment and Public Health

(a) Comment: Norma Caine
We must have strong regulations to protect residents and the environment. We cannot rely on self monitoring or verbal agreements. In 1997, 24 chicken houses were built around our home, the closest set of eight just 278 feet from our back door, causing me stress and health problems. The 24 houses are in flood prone areas and are approximately 1,000 feet from the Webster County Water Treatment Plant, and less than one mile from its supply wells and the Green River.

My home is full of dust from feed and chicken trucks and the smell of spreading manure. The houses attract flies, rats, buzzards, wild dogs, opossums, and snakes. We are no longer able to enjoy outdoor activities for the breathtaking odor. My husband now has to use an inhaler on a daily basis and I have developed allergies that only flare up when they move chickens out. Our window screens are covered with feathers and swarming flies. I've seen dead chickens piled upon each other and laying on the ground in trenches that carry run off to our creeks. Stockpiles of manure are left exposed to the weather, allowing leachate to run off. Tarping the exposed stockpiles would help. Most of the work in chicken houses is done at night, keeping neighbors awake.

Drainage ditches have been cut to carry all runoff from the chicken house sites to the Green River. There are several small old gravel pit lakes near the chicken house operation. Local people fish at these lakes. Areas in and around these lakes would be classified as a wetland, as documented by the U.S. Army Corps of Engineers. Setbacks and integrator liability are needed and must be enforced. Non process wastewater must be addressed.

Laboratory analyses results showed the following:

- 1) UT - Pitman Creek at B.D. Luck Road: Ammonia - Nitrogen 19.8 mg/L, Total Kjeldhal Nitrogen 40.4 mg/L, Nitrate 0.043 mg/L, Phosphorus, total 20.1 mg/L;
- 2) In woods on East side of road at driveway: Fecal Coliform 1,960 / 100 ml, Ammonia Nitrogen as N 3.75 mg/L;
- 3) By Onton #3, ditch at road: Fecal Coliform 965 / 100 ml, Ammonia Nitrogen as N 3.13 mg/L; Runoff from wash house on hill (This runs into my ditch and floods my yard every time it rains; my children play in this yard).

(b) Response: The Cabinet is aware of the situation detailed in this comment. The Cabinet has made a number of inspections in response, and is addressing the matter accordingly. Issues relating to dust, vectors (flies, rodents, etc.), hours of operation, and stress are outside the jurisdiction of this regulation. Permanent litter storage is required if manure is stored at the CAFO operation. Otherwise, any stockpiling of manure is to be done in accordance with the Agriculture Water Quality Plan, including the use of temporary covers such as tarps. Any potential violation in existing regulations should be reported to the regional field office and handled as a complaint.

(18) Subject: Threat to Environment and Public Health

(a) Comment: Sue Anne Salmon

Joan Denton, Sierra Club & KFTC

Unless strong regulations are created we have no protection from a new neighbor constructing a CAFO and exposing us to great risk from disease transmitted from animals to humans. More people died from the 1918 swine flu epidemic than were killed in battle in World War I. Just a few years ago in China, an avian flu killed several people. The only remedy was to destroy millions of chickens. Spongiform encephalopathy, the Mad Cow disease, has decimated the British cattle industry. It started by farmers feeding animal waste to their cows. Cholera killed hundreds of people in and around Evansville, Indiana in the 1800s and still occurs in many parts of the world. It is spread by flies from swine open-air waste lagoons or by hog waste runoff contaminating groundwater and streams. It is our moral and ethical responsibility to the future to safeguard Kentucky's groundwater and waterways.

(b) Response: The comments are noted.

(19) Subject: Threat to Environment and Public Health

(a) Comment: Sue Dant, Farmer

I live on a farm and I'm against poultry farms. They're polluting our countryside.

(b) Response: The comment is noted.

(20) Subject: Threat to Environment and Public Health

(a) Comment: Bernie Miller

We have two children who play in the front yard. Transporters are not covering the chicken manure. The smell and flies are horrible. What are the long term effects on my girls?

(b) Response: See responses to comments #16 and 17.

(21) Subject: Threat to Environment and Public Health

(a) Comment: David Herron, Pilot & Poultry Farmer

How many chicken farm runoffs have caused Pfiesteria?

(b) Response: Public health impacts from pfiesteria have been documented in other states.

However, the Cabinet has not received any information that would indicate that Kentucky waterways are susceptible to pfiesteria. Pfiesteria and pfiesteria-like dinoflagellates are marine organisms found in coastal waters and estuaries, rather than inland freshwaters.

(22) Subject: Odor

(a) Comment: Rick Householder, Mayor, Clay, Kentucky

Our major problem is odor. Some people feel bad just from the smell. How can we reduce the odor from chicken houses?

(b) Response: The Cabinet currently enforces an odor standard through the Division for Air Quality. Setbacks are incorporated into the proposed regulation to address the impacts due to odors. Other odor control practices include more frequent cleaning of houses, better ventilation of housing, air filters on exhaust fans, negative air systems in housing, and adding the enzyme phytase to feed.

(23) Subject: Animal Rights

(a) Comment: Winnie Hepler

The major players in CAFO operations are animals. Chickens, cows, turkeys and pigs feel pain and fear. Unspeakable cruelties are visited upon animals in factory farms. The breeding, transportation and slaughter of livestock begs for scrutiny. Drugs including pesticides, antibiotics, and hormones replace responsible animal husbandry under the mass factory farm system. Require this industry to treat animals humanely. Go vegetarian. My organic farmer says he makes more on one acre of organically grown food than on three acres of tobacco.

(b) Response: The Cabinet does not regulate issues concerning animal cruelty.

(24) Subject: Statutory Authority

(a) Comment: Dennis O. Liptrap, IPKY, Inc.

In the last two legislative sessions, the will of the people and the ability of our legislators to vote on this issue and give guidance to the Cabinet in developing and promulgating regulations has been thwarted by the Executive Branch. We're going to another set of emergency regulations to

permanent regulations that will be enforced regardless of legislative input until the next session, two years from now. That is not the intended purpose of regulatory agencies.

(b) Response: The Legislature has the power to enact statutory provisions that regulate the subject matter of these administrative regulations. Two bills, House Bill 940 and House Bill 665 were introduced in the General Assembly this past session dealing with CAFOs. However, neither bill passed and issue is in the process of being addressed via this administrative regulation.

(25) Subject: Statutory Authority

(a) Comment: Dennis O. Liptrap, IPKY, Inc.

Where is the statutory authority for interjecting Cabinet regulations into legally binding contracts between two entities, especially retroactively?

(b) Response: The authority of the Cabinet is set forth in KRS 224.10-100. The Cabinet has the general authority to exercise supervision of administration and enforcement of KRS Chapter 224. The Cabinet specifically has the authority to:

Issue, continue and effect, revoke, modify, suspend or deny under any conditions as the Cabinet may prescribe and require that applications be accompanied by plans, specifications and other information as the Cabinet deems necessary for the following permits: (a) permits to discharge into any waters of the Commonwealth. KRS 224.10-100(19).

The Cabinet also has the authority pursuant to KRS 224.10-100(21) to require persons discharging into the water to meet levels of treatment and effluent limitations which are set by the Cabinet. Furthermore, since pursuant to KRS 224.16-050, the Cabinet has been given the authority to implement the federal Clean Water Act, the Cabinet has the authority to place on discharges the same requirement as EPA. As noted, EPA believes that the owner of the animals is in fact an owner or operator of the CAFO discharging into the waters of the Commonwealth, and the Cabinet has the power to regulate them. This statute does not regulate the duties of contracting parties to each other. It regulates each party's duty to the state.

(26) Subject: Statutory Authority

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

KRS 224.70 prohibits direct or indirect discharge of any pollutant or substance that would cause or contribute to pollution. This prohibition is broad enough to cover both point and nonpoint source discharges onto land which drains into water and which would cause an exceedance of water quality standards, since those standards apply to all sources of pollution, as was recognized in the state Agriculture Water Quality Plan. Additionally, a mandate to prevent pollution arises under the KPDES program. The prevention of nuisance associated with the placement of water material through land application of wastes and solids in wastewater must conform to the environmental performance standards of 401 KAR Chapters 47 and 48. Against the backdrop of a clear statutory mandate for protection of the land, air, and water resources from pollution, it is clear that the permanent regulation must go beyond the emergency regulation.

(b) Response: We believe the Cabinet has appropriately exercised its statutory mandate in promulgating this administrative regulation. It should be noted that CAFOs are considered point source discharges under the Clean Water Act.

The statutory definition of "Solid Waste" (KRS 224.01-010(31)(a)) specifically exempts "... manure, crops, crop residue, or a combination thereof which are placed on the soil for return

to the soil as fertilizers or soil conditioners ...” The environmental performance standards of 401 KAR 47:030 apply to solid waste sites or facilities. Therefore, a site where manure and crop residue are applied to the land as a fertilizer or soil conditioner is not subject to the environmental performance standards, since it would not be a solid waste site or facility. The Cabinet acknowledges that manure may be land-applied in such amounts that it would cease to be fertilizer or soil conditioner. The proposed administrative regulation addresses this possibility by imposing siting criteria. The KPDES program also addresses this possibility by requiring Comprehensive Nutrient Management Plans. These requirements are as a practical matter equally effective as the environmental performance standards of 401 KAR 47:030.

(27) Subject: Statutory Authority

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

To the extent that the Cabinet establishes setbacks which restrict location, siting, or land application within certain distances of structures or receptors other than pollution-sensitive natural resources, the Council recommends that the authority of the Cabinet under the solid waste statutes be invoked to support those setbacks, and that the setbacks be revised to properly protect the rights of third parties.

(b) Response: The Cabinet considers its authority to enforce CWA requirements, regulate sewer systems and regulate air quality in the Commonwealth to be sufficient to support setbacks. See also response to comments # 26 and 43.

(28) Subject: Court Decisions

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club

Last year, the U.S. District court found dairies with 5,250 dairy cows to be CAFOs and were strictly liable for violations of the Clean Water Act. In North Carolina, a U.S. District Judge found that Murphy Farms, as the operator, was a CAFO along with the actual farm owner. The U.S. Court of appeals made it clear that a point source that uses land application to dispose of waste can be regulated as part of the NPDES requirement, holding: “the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silviculture and storm water runoff point sources”. The Georgia Supreme Court recently ruled in favor of residential property owners within one half mile of a of a proposed swine feeding operation, to prohibit the construction. This supports the finding that setbacks are needed to prevent nuisance.

(b) Response: The Cabinet is aware of these court decisions, however the issue of whether these operations constitute a nuisance is separate from the Cabinet’s administrative regulations.

(29) Subject: Stricter Than Federal Mandate

(a) Comment: Todd Wright, Complex Environmental Manager, Tyson Foods

Kimberly Boswell, Poultry Farmer, Nurse

Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

Bill Payne, Dairy Producer, Kentucky Milk Producer’s Association

Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau

Dennis O. Liptrap, IPKY, Inc.

Meldrum Harvey, Retired Physician & Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Mike Brawner, Farmer
Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC
Spence Jarnigan, General Manager, ConAgra Poultry Company
Judith A. Villines, Attorney, Tyson Foods, Inc.
Judith A. Villines, Attorney, Perdue Farms, Inc.

The Regulatory Impact Analysis states that this administration will not impose stricter requirements or additional otherwise different responsibilities or requirements from those required by the federal mandate based on the March 9, 1999 USDA USEPA *Unified National Strategy for Animal Feeding Operations*. This document is nothing more than a planning document and it has not been incorporated into the Codified Federal Register, therefore cannot be used to satisfy the statutory requirements for regulations to be stricter than the federal government nor can it be used to satisfy the federal requirement that state regulations be at least as stringent as the federal requirement. The Commonwealth of Kentucky should not take any action until the USEPA has resolved this issue at the national level. Action by the state will place our animal production industry at a disadvantage when competing with the other states in the same type of production. Kentucky should not fight the costly lawsuits for EPA. Authority vested in state law or federal law is the only authority that can be defended in court. State regulations stricter than federal requirements are prohibited under KRS 224.16-050 and place our Kentucky producers on an unfair playing field.

(b) Response: In Kentucky, pursuant to KRS 13A.130, an administrative body cannot use internal policy memoranda or guidance documents as regulations unless they are promulgated pursuant to KRS Chapter 13A. EPA frequently publishes many guidance documents and has done so with the publication of the U.S. Department of Agriculture/U.S. Environmental Protection Agency *Unified National Strategy for Animal Feeding Operation*, March 9, 1999. EPA is not bound by KRS Chapter 13A requirements. The strategy does note at Section 1.11 that it is not a new regulation nor is it a substitute for existing federal regulations and does not impose any binding requirements on USDA, EPA and the states. It does, however, set forth EPA's interpretation of its currently existing law which is the law of the land and has been the law of the land for quite some time.

In the USDA/USEPA *Unified National Strategy for Animal Feeding Operations* issued March 9, 1999, EPA had this to say about integrator liability:

EPA believes that corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO owner/operator and will clarify this in CAFO permit guidance.

Strategic Issue No. 3 1.C.

In addition, in the *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* issued August 6, 1999, EPA stated the following:

Corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO operator. Corporate entities that exercise such operational control over a CAFO are considered "operators" of the CAFO under the Clean Water Act (CWA).

Id. at Section 2.4.

As we read the *Guidance Manual*, EPA is requiring integrator liability because it considers integrators to be "operators". Furthermore, EPA interprets its current regulations as

creating liability for the integrator and the regulation in that regard is not more stringent than federal law.

The federal Clean Water Act itself does not define “owner” or “operator”. However, the federal regulation, found at 40 CFR Section 122.2, does contain broad definitions of the terms “owner” and “operator”. It is the position of EPA that persons who direct the activities of persons working at the CAFO either through contact or direct supervision or on-site participation in the facility, or who own the animals, or who specify how the animals are grown fed, or medicated, meet the definitions of “owner” and “operator” and therefore must apply for a CAFO permit. See, *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* August 6, 1999, Section 2.4.

The Commonwealth of Kentucky administers the federal Clean Water Act pursuant to KRS 224.16-050(1). Most of the Cabinet’s administrative regulations are taken directly from the Code of Federal Regulations and placed into the *Kentucky Administrative Regulations* with minor wording changes made only to accommodate KRS Chapter 13A. This is the authority delegated to the Cabinet pursuant to the federal Clean Water Act. This is a federal program and the Commonwealth must follow EPA’s lead in this matter. The definitions of “owner” and “operator” that appear in 40 CFR Section 122.2 are as follows: “‘Owner’ or ‘operator’ means the owner or operator of any ‘facility or activity’ subject to regulation under the NPDES program.” Kentucky’s administrative regulations follow this definition. 401 KAR 5:002 Section 1(175) defines “operator” as: “Any persons involved in the operation of a facility or activity.”

This regulation is not issued only pursuant to the federal Clean Water Act. The regulation is also issued pursuant to the Cabinet’s authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue these individual regulations, and the regulations do not relate to federal Clean Water Act permits alone. Since the regulation is not solely based on the Cabinet’s authority under the Clean Water Act permit, the issue of whether or not it is “more stringent than” the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the federal Clean Water Act.

CAFOs are clearly defined in federal law as KPDES “point sources.” 33 U.S.C. Section 1362 defines “point source” as follows:

The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, **concentrated animal feeding operation**, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharge and returns flows for irrigated agriculture.

33 U.S.C. Section 1362(14) (emphasis added).

A CAFO meets the definition of point source. Congress did not define “concentrated animal feeding operations”, but EPA has done so in the Code of Federal Regulations. Any operation that meets that definition is a “point source”. It thus becomes a facility or activity regulated by

the CWA. EPA considers anyone who owns animals at a CAFO or provides operational direction at the CAFO to be the owner or operator of the CAFO.

(30) Subject: Stricter Than Federal Mandate

(a) Comment: Todd Wright, Complex Environmental Manager, Tyson Foods

Kimberly Boswell, Poultry Farmer, Nurse

Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

Bill Payne, Dairy Producer, Kentucky Milk Producer's Association

Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau

Dennis O. Liptrap, IPKY, Inc.

Meldrum Harvey, Retired Physician & Farmer

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Mike Brawner, Farmer

Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC

Spence Jarnigan, General Manager, ConAgra Poultry Company

Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

The legal status of co-permitting or integrator liability is unclear. The federal NPDES program has limited the obligations under the program to a universe of persons that does not include integrators; the operator is responsible for obtaining a permit and complying with it when ownership and operation are split. The regulation is unlawful because it requires persons who are neither owners nor operators to be co-permittees on the permit and to be jointly and severally liable for violations. EPA intends the person with operational control over the facility to be the one required to submit a permit application. The Commonwealth of Kentucky should not take any action until the USEPA has resolved this issue at the national level. Action by the state will place our animal production industry at a disadvantage when competing with the other states in the same type of production. Kentucky should not fight the costly lawsuits for EPA. State regulations stricter than federal requirements are prohibited under KRS 224.16-050 and place our Kentucky producers on an unfair playing field.

(b) Response: See response to comment # 29.

(31) Subject: Stricter Than Federal Mandate

(a) Comment: Tony Sholar, Vice President for Public Affairs, Kentucky Chamber of Commerce

Roger Osburn, Chicken Grower

Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC

Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

Spence Jarnigan, General Manager, ConAgra Poultry Company

Ronnie Bloecher, Poultry Farmer

The NOI to promulgate 401 KAR 5:072 violates one of the basic principles of the KPDES program; that state issued permits contain no term or condition stricter than federally issued NPDES permits.

The federal NPDES permit program is limited to the regulation of discharges, not facility construction and siting, and under 224.16-050, the permit program is similarly restricted. Neither federal statute or regulation allows NREPC to use point-source water quality permits to regulate odor / air quality, construction, siting or setback of facilities. These issues must be addressed by utilizing authority other than the KPDES permit program or by deferring action until such requirements are added to the federal NPDES program or it will lead to extensive litigation, legal failure, and further delays in addressing those issues.

(b) Response: 33 U.S.C. Section 1362 defines point source as follows: The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, **concentrated animal feeding operation**, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharge and returns close for irrigated agriculture. 33 U.S.C. 1362(14).

A CAFO meets the definition of point source. This includes the whole operation not just a particular discharge point. Congress did not define “concentrated animal feeding operations”, but the EPA has done so in the Code of Federal Regulations. Any operation that meets that definition is a point source.

This regulation is not issued only pursuant to the federal Clean Water Act. The regulation is also issued pursuant to the Cabinet’s authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue these individual regulations, and the regulations do not relate to federal Clean Water Act permits alone. Since the regulation is not solely based on the Cabinet’s authority under the Clean Water Act permit, the issue of whether or not it is “more stringent than” the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the federal Clean Water Act.

(32) Subject: Stricter Than Federal Mandate

(a) Comment: John Donaldson

These regulations supersede the maximum strategy set out by EPA on March 9, 1999. There is no law on the books currently that will allow you to regulate poultry.

(b) Response: See response to comments 29, 30, and 31 above. It should be noted that the Clean Water Act pursuant to 33 USC Section 1362 defines a concentrated animal feeding operation as a point source regulated under the Clean Water Act and the Code of Federal Regulations clearly references poultry as a part of the regulatory scheme.

(33) Subject: Stricter Than Federal Mandate

(a) Comment: Sam Moore, Farmer

Mike Latta, Poultry Farmer

Richard Mattingly, Farmer

Douglas Lewis, Poultry Farmer

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Neither federal statute nor regulation instruct, require or even mention contractual liability. The Cabinet is in clear violation of KRS 13A, the state's law that prohibits regulations that are stricter than federal law. The state is now imposing stricter unnecessary guidelines on my farm when it is already regulated by the federal government. Kentucky regulations should not be more stringent than the federal regulations.

(b) Response: See response to comment #29, 30, and 31.

(34) Subject: Stricter Than Federal Mandate

(a) Comment: Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

Spence Jarnigan, General Manager, ConAgra Poultry Company

The Clean Water Act does not require KPDES permits for facilities unless they are point sources that discharge pollutants into navigable waters. The Cabinet has given no effect to the qualifying language relating to overflow watering and liquid manure systems. While Kentucky may meet the numerical portion of the CAFO definition, the facilities do not discharge pollutants into navigable waters within the meaning of the statutes because their dry litter systems do not result in such discharges.

(b) Response: See response to comment # 31. CAFOs are clearly defined in federal law as KPDES "point sources." 33 U.S.C. Section 1362 defines "point source" as follows:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, **concentrated animal feeding operation**, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharge and returns flows for irrigated agriculture.

33 U.S.C. Section 1362(14) (emphasis added).

A CAFO meets the definition of point source. Congress did not define "concentrated animal feeding operations", but EPA has done so in the Code of Federal Regulations. Any operation that meets that definition is a "point source". It thus becomes a facility or activity regulated by the CWA. EPA considers anyone who owns animals at a CAFO or provides operational direction at the CAFO to be the owner or operator of the CAFO.

In addition, in the USDA/USEPA's *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations*, August 6, 1999, the EPA at Section 2.3.2 notes that poultry operations that remove dry litter waste from pens and stack it in areas exposed to rainfall may be considered to have established a crude liquid manure system.

(35) Subject: Stricter Than Federal Mandate

(a) Comment: Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

The regulation is unlawful because it does not give effect to the exemption for agriculture stormwater discharges as provided by Section 402 of the Clean Water Act.

(b) Response: Agricultural stormwater discharges are separate discharges from those made by concentrated animal feeding operations. Concentrated animal feeding operations are clearly considered point source discharges under the Clean Water Act. See responses above.

(36) Subject: Stricter Than Federal Mandate

(a) Comment: Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

The regulation is unlawful because it does not give effect to the exemption for facilities that only discharge in the 25-year, 24-hour storm event as provided by 40 CFR Part 122 Appendix B(b).

(b) Response: The Cabinet is not changing the definition of what a CAFO is in the proposed regulation.

(37) Subject: Stricter Than Federal Mandate

(a) Comment: Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

The regulation is unlawful because it attempts to regulate the land application of waste in contravention to the express recognition in the Clean Water Act and the federal regulations providing that cultivated crop areas are non-point sources not subject to permitting requirements under the Clean Water Act. The Cabinet has no other source of authority for regulation of land application.

(b) Response: Cultivated crop areas that are associated with Concentrated Animal Feeding Operations are considered point sources pursuant to 33 USC Section 1362. See responses to comments #31 and 34 above. In addition, this regulation is not issued only pursuant to the federal Clean Water Act. The regulation is also issued pursuant to the Cabinet's authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue these individual regulations, and the regulations do not relate to federal Clean Water Act permits alone.

(38) Subject: Stricter Than Federal Mandate

(a) Comment: Spence Jarnigan, General Manager, ConAgra Poultry Company

An AFO with less than 1,000 animal units is not a CAFO unless it discharged into navigable waters through an artificial ditch, flushing system or other artificial device, or has discharged pollutants directly into the waters of the U.S. through the facility or otherwise come into direct contact with the animals at the operation. 40 CFR 122, Appendix B.

(b) Response: If an animal feeding operation less than 1000 animal units does not have a direct discharge to a water of the Commonwealth, or is not otherwise designated a CAFO by the Cabinet, that operation would not be a CAFO. The Cabinet will be following federal guidance on implementing the federal NPDES program in Kentucky.

(39) Subject: Stricter Than Federal Mandate

(a) Comment: Spence Jarnigan, General Manager, ConAgra Poultry Company

No operation may be designated a CAFO on a case-by-case basis until the permitting authority has conducted an on-site inspection of the facility and determined it to be an actual or potential

significant contributor of pollutants to waters of the U.S., regardless of the size of the operation or type of animals confined. 40 CFR 122.23(c)(3).

(b) Response: CAFOs that exceed one thousand (1,000) animal units do not need to be designated as regulated on a case by case basis pursuant to 40 CFR 122.23.

(40) Subject: Stricter Than Federal Mandate

(a) Comment: Spence Jarnigan, General Manager, ConAgra Poultry Company
Internal Revenue Service regulations state that an individual is an “independent contractor” if he “is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result” (26 CFR 31.3121(d)-1(C) (2)). It is inappropriate to consider corporate entities or consultants as “operators” of a CAFO, and it is also inappropriate for the Cabinet to subject corporate entities or consultants jointly to the NPDES permitting requirements of contract grower operations.

(b) Response: Internal Revenue Service regulations are federal regulations promulgated for the purpose of collecting tax monies. The Cabinet’s administrative regulation is promulgated for the purpose of protecting the environment. Therefore, IRS regulations are irrelevant to the Cabinet’s environmental regulations.

(41) Subject: Federal Packers & Stockyard Act

(a) Comment: Carole Knoblett, Kentucky Poultry Federation
Under the Federal Packers & Stockyard Act no livestock or poultry company can enter into any agreement that limits competition, and no state government can implement regulation that interferes with the Federal Packers & Stockyard Act. The proposed state regulation that requires the poultry company to be a co-permittee with a poultry grower seriously reduces a growers ability to negotiate contracts with competing poultry companies because of the joint permit. For a grower to switch companies they would require a new permit. This process will inhibit growers from seeking a new company to contract with, reducing competition for grower services. How can the Cabinet justify creating a state regulation that is in violation of federal law and mandates to a company that they enter into an agreement that is in direct violation of federal law?

(b) Response: The Federal Packers & Stockyard Act is a federal law designed for the purpose of regulating trade. This regulation is promulgated for the purpose of protecting the environment. Therefore, the Federal Packers & Stockyard Act is not relevant to the Cabinet’s environmental administrative regulation. With respect to switching companies and contracts, a permit can quickly and easily be transferred to another entity with a change of ownership form. A new permit would not need to be issued, rather simply transferred to another party.

(42) Subject: Scope of Regulation

(a) Comment: Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
The regulation goes far beyond the KPDES goal of water quality protection because it includes air quality considerations. Air quality and odor need to be addressed, but not under the guise of water quality regulations.

(b) Response: This regulation is not issued only pursuant to the federal Clean Water Act. The regulation is also issued pursuant to the Cabinet’s authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for

construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue these individual regulations, and the regulations do not relate to federal Clean Water Act permits alone. Since the regulation is not solely based on the Cabinet's authority under the Clean Water Act permit, the issue of whether or not it is "more stringent than" the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the federal Clean Water Act.

(43) Subject: Conflict With 401 KAR Chapter 47

(a) Comment: Todd Wright, Complex Environmental Manager, Tyson Foods
Litter being stockpiled for beneficial reuse as a nutrient source is classified under 401 KAR Chapter 47 as a Permit-By-Rule. The Regulatory Impact Analysis did not reference apparent conflicts with this regulation. How does Chapter 47 relate to this regulation?

(b) Response: There is no conflict with the proposed regulation and 401 KAR Chapter 47. Temporary storage of litter prior to land application is allowed as a permit-by-rule under 401 KAR 47:150. Specifically, the regulation allows "waste piles" that are solid wastes generated in the normal conduct of business to exist without being required to obtain written approval from the Cabinet. However, activities that fall under the permit-by-rule provision must comply with the environmental performance standards of 401 KAR 47:030 and cannot present a threat to human health or the environment. The permit-by-rule regulation does not preclude the Cabinet from imposing management practices for specific wastes when the Cabinet determines a potential for environmental harm exists. See also, 401 KAR 30:020, Section 4 with respect to stringency of other regulations when potential contradictions to arise.

As a result, the requirement for permanent litter storage at an operation defined as a CAFO is an acceptable management practice. In addition, the requirement to provide temporary storage for manure stockpiled on sites not defined as a CAFO, are likewise acceptable management practices. Whether off-site storage is subject to provisions beyond the permit-by-rule provisions of 401 KAR 47 is determined on a case by case basis.

(44) Subject: Applicability

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
A CAFO should be defined by its process and how it produces a product, not by the type of animal units, type of facilities, structures, etc.

(b) Response: The CAFO definition comes from federal regulations , which only EPA can change.

(45) Subject: Applicability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation
What process does the Division use to determine the number of units at a facility? Is it reliance on the number of birds called for by the contract between the farmer and the processing facility?

(b) Response: As is the case with all KPDES permits, the Division relies upon information contained within the permit application. Therefore, we will use the application to determine the number and type of animals. With respect to this specific question, the number of birds expressed in a contract between the farmer and the processing facility will provide a good basis for making that determination.

(46) Subject: Applicability

(a) Comment: Todd Wright, Complex Environmental Manager, Tyson Foods Poultry operations that utilize a dry litter system do not generate a discharge which may be construed as either a process wastewater flow or a process generated wastewater flow. Once litter is removed from the physical confines of the production facility, it is no longer an integral part of the production facility, therefore circumventing the permitting requirements of the Clean Water Act and 40 CFR Part 412.

(b) Response: The agency will be using EPA guidance to interpret the existing CAFO definitions. This guidance places emphasis on numbers of birds as to which facility is or is not a CAFO. The question of dry litter systems, and whether they will be defined as a CAFO, will be determined during the course of the permitting process. See also response to comment #34.

With respect to litter, once removed from the CAFO operation, it is no longer subject to the provisions of this regulation or the KPDES program. The ownership and responsibility of the litter after it leaves the grower would fall to the individual who is subsequently in control of that litter. The CAFO need only to record when litter leaves the operation. The handling of that litter is to be done in accordance with the Agriculture Water Quality Plan, in addition to any applicable state regulatory requirement.

(47) Subject: Applicability

(a) Comment: Dennis O. Liptrap, IPKY, Inc.
Where are the KPDES permits for equine operations? Current operations meet the criteria for equine CAFOs including co-permitting. How do you propose to implement this provision with the transient nature of race horses?

(b) Response: This agency is not aware of any horse feeding operations that would meet the existing definition of a CAFO.

(48) Subject: Applicability

(a) Comment: Dennis O. Liptrap, IPKY, Inc.
Does the old KNDOP permit meet the present standards for a federal NPDES permit? If yes, why are you proposing more stringent regulations so far ahead of finalized federal guidelines?

(b) Response: No, the current “no discharge” permit program as implemented under 401 KAR 5:005 is not equivalent to KPDES program standards. As a result, the Cabinet has proposed to use the federal NPDES permit (or an equivalent) as required by EPA. The regulations being proposed are not more stringent than the federal regulations. See also response to comments # 29 thru 40.

(49) Subject: Applicability

(a) Comment: Mark Redding, President, Kentucky Pork Producers Association
In previous emergency regulations, swine CAFOs were defined in terms of swine units, with formulas used to calculate swine units. This allowed swine producers from different types of operations to determine their number of swine units somewhat easily. Has the NREPC gone away from that type of definition?

(b) Response: The current approach is to regulate CAFO’s through the KPDES system which necessitates a reliance on the federal CAFO definition, rather than under the previous state swine regulation. This definition specifies that 1000 animal units as 2500 swine each weighing

over 55 pounds. This is consistent with the previous swine regulation. While the previous means of calculating swine units (functionally equivalent to animal units) is no longer in effect, producers are encouraged to use this method as an easier means of determining the number of animal units at a given operation.

(50) Subject: Applicability

(a) Comment: Mark Redding, President, Kentucky Pork Producers Association
Are existing producers who are currently permitted with a KNDOP permit grandfathered in or are they required to obtain a KPDES permit?

(b) Response: All CAFOs will need to be permitted under the KPDES permit system. An operation currently permitted under 401 KAR 5:005, Kentucky No Discharge Operational Permit (KNDOP), that is defined as a CAFO, will have that permit inactivated once permitted under the KPDES program.

(51) Subject: Applicability

(a) Comment: Charles Mann, President, Citizens Deposit Bank, Calhoun, Kentucky
If I don't have a continuing overflow water system or a liquid manure system, how many birds can I raise before I become a CAFO.

(b) Response: When a poultry AFO reaches 100,000 birds, it is generally considered a CAFO. Exceptions to this interpretation will be made on a case by case basis as permits are issued. See also the response to comment #46.

(52) Subject: Agriculture Water Quality Plan & Best Management Practices (BMPs)

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse

James Duff, Poultry Farmer

Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

Carole Knoblett, Kentucky Poultry Federation

Tim Hughes, Producer

Sam Moore, Farmer

Richard Mattingly, Farmer

Lloyd R. Cress, Attorney, Cagle's-Keystone Foods, LLC

Wesley Slaton, Farmer

Spence Jarnagin, General Manager, ConAgra Poultry Company

Charles Shocklee, Farmer

Melody Vaught, Poultry Farmer

Charles Mann, President, Citizens Deposit Bank, Calhoun, Kentucky

Most farmers use proper procedures for land application. Why haven't the water quality BMPs 11 and 17 been given an opportunity to work when this process will affect the so-called bad actors? Permits and regulations are not needed if Farmers are being conscientious neighbors. The Agriculture Water Quality Plan is in place to support agriculture and protect the environment. What scientific basis exists demonstrating that something more than BMP 17 is needed in addressing environmental issues at poultry farms?

(b) Response: The BMPs required under the Agriculture Water Quality Plan will be given the opportunity to work. However, the Agriculture Water Quality Act, KRS Subchapter

224.71 is a state statute pursuant to state only authority and not pursuant to the Clean Water Act. Independent of that statute, the Cabinet has responsibility pursuant to KRS 224.16-050(1) to administer the provisions of the Clean Water Act 33 U.S.C. 1251, *et seq.* The Agriculture Water Quality Act is not stringent enough to meet the requirements of the federal Clean Water Act. It does not, for example, govern the issuance of NPDES permits required by the Clean Water Act. Thus relying on it alone would violate the provisions of the Clean Water Act found in 33 U.S.C. 1370.

(53) Subject: Agriculture Water Quality Plan

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

The development or upgrading of a comprehensive nutrient management plan needs to be one of the first things that is considered for those that do have the Agriculture Water Quality Plans in place.

(b) Response: The Cabinet agrees with this comment. The agency anticipates significant delays in producers being able to locate and retain qualified assistance in the preparation of the CNMPs. Therefore, while requiring the basic Agricultural BMP plan right away (to provide a continuing level of protection), a delayed requirement for the CNMPs was considered necessary. This will be discussed further within the draft KPDES general permits response to comments.

(54) Subject: Agriculture Water Quality Plan

(a) Comment: Mike Ovesen, Executive Director, Kentucky Pork Producers

Dennis Liptrap, IPKY, Inc.

Carole Knoblett, Kentucky Poultry Federation

Anthony Pescatore, Poultry Extension Specialist, University of Kentucky

Terry Rhodes, President, Kentucky Corn Growers Association

Elwood Butrum, Poultry Farmer

Rick Williams, Poultry Farmer

Angela Leach, Farmer

Nancy Butler, Farmer

Jerry Lock, Poultry Farmer

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Wesley Slaton, Farmer

John and Rickie Shocklee, Farmers

The agriculture community has worked diligently with the Cabinet on the Agriculture Water Quality Plan and educated farmers about environmental responsibility and BMPs without recognition from the Executive Branch. Allow the Agriculture Water Plan an opportunity to work. Allow the Agriculture Water Quality Authority input into flexible, common sense regulations that protect the water and the livestock industry. Enforce current regulations.

(b) Response: The Agriculture Water Quality Plan will be allowed to work, will be enforced, and is recognized as a valuable means of protecting the water quality. The Agriculture Water Quality Plan is an important step toward clean water in the state, however, it does not implement the Clean Water Act. See response to questions no. 52 above. Given that the CAFO definitions reside within federal NPDES regulations, EPA has directed delegated states to use their NPDES programs to regulate CAFO's. The Cabinet will be sure to integrate requirements of the Agriculture Water Quality Plan and the KPDES program into one another as appropriate.

(55) Subject: Agriculture Water Quality Plan

(a) Comment: Aloma Dew, Sierra Club

We cannot wait until October 2003 when the Ag Water Quality rules go into effect. These rules are at best suggestions with no real enforcement.

(b) Response: The Cabinet acknowledges the comment. The agriculture water quality plan requirements are enforceable. It should be noted that the Agriculture Water Quality Plan requirements go into effect in October 2001, not 2003. The implementation of KPDES for CAFO's will not be delayed based on later deadlines for other programs. See also response to comments # 52 thru 54.

(56) Subject: Agriculture Water Quality Authority

(a) Comment: Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

We strongly object to the Cabinet's establishing siting criteria and setbacks without formally requesting input from the expertise and the experience of the Agriculture Water Quality Authority. Deciding where farming operations can build or expand facilities and apply manure without input from the agriculture community could force livestock and poultry farmers out of business. The Cabinet *has* incorporated nearly all of the Authority's setbacks for poultry in the proposed regulations.

(b) Response: The Cabinet has sought the input of the Agriculture Water Quality Authority, commodity groups, extension, farmers, and numerous other individuals throughout the course of this process of addressing animal feeding operations. When setback requirements are proposed in a permanent regulation, those setbacks will be based on the considerable background of knowledge accumulated by the cabinet to date. See also response to comment #31.

(57) Subject: Agriculture Water Quality Authority

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club

The Kentucky Agriculture Water Quality Act could have anticipated the need for industrial type water quality requirements but did not. The Kentucky Agriculture Water Quality Authority has shown that it lacks the will or the ability to address these problems.

(b) Response: The Kentucky Agriculture Water Quality Authority's authority is strictly limited by KRS Chapter 224. The Cabinet's broader authority pursuant to KRS Chapter 224 and the Clean Water Act is needed to promulgate these requirements. The agency's implementation of a KPDES program for CAFO's will not be based solely on the input from the AWQA.

(58) Subject: Over-regulation of Farmers

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse

Jerry Whitledge, Farmer

Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau

Richard Mattingly, Farmer

Melody Vaught, Poultry Farmer

Farmers are being over-regulated. Enforcement of current regulations would eliminate the few bad actors. Farmers are responsible for their operations and do not need or want government protection.

(b) Response: The Cabinet recognizes the existing requirements placed on farmers. Clearly farmers, as primary owner and operator, are responsible for their own property. However, if a farmer goes bankrupt, or becomes unable to continue to farm due to death or illness, it is necessary for someone to remove the waste. It is more equitable for the integrator who profited from the operation, often even owning the animals, to be responsible for removing the animal's waste and this cost should not be left to the taxpayers.

(59) Subject: Over-regulation of Farmers

(a) Comment: Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

The livestock industry accounts for over half of the four billion dollars in income in our state and offers the opportunity for diversification at a time when, especially small farmers, who have depended on tobacco need it. Increased regulations take away that opportunity. A farmer recently said that he can't make a multi-million dollar expansion when complying with regulation is like shooting at a moving target. The current Kentucky regulatory programs are sufficient to address the concerns for environmental protection.

(b) Response: The Cabinet recognizes the importance of the livestock industry to the economy of the Commonwealth. However, the importance of protecting and conserving Kentucky's environment is equally important to the citizens of the state. We disagree that currently Kentucky's regulatory programs are sufficient to address the concerns for environmental protection, especially when large agricultural feeding operations are involved. EPA expects each delegated state to use their NPDES programs to regulate CAFO's (existing federal regulations mandate NPDES permits for CAFO's). The Cabinet will strive as much as possible to prevent duplication of effort and will attempt to integrate the issuance of KPDES permits into an overall animal waste strategy.

(60) Subject: Over-regulation of Farmers

(a) Comment: Alfred O'Reilly, Poultry Farmer

These extreme and over-reaching regulations are an attempt to appease a few alarmists who need to be re-educated. Most complaints were only harassment. Democracy is supposed to work for the common good, not for the interest of a few misguided individuals.

(b) Response: The Cabinet does not consider these regulations extreme and overreaching. The legal process is being followed in their enactment. Any proposed permanent CAFO regulation will establish only those requirements that are necessary to protect human health and the environment. The resulting regulation will be an attempt to balance many different points of view.

(61) Subject: Enforce Current Regulations

(a) Comment: Bill Payne, Dairy Producer, Kentucky Milk Producer's Association
Rick Householder, Mayor of Clay, Kentucky
John Warren, Farmer
Heather Roe Mahoney, Democracy Resource Center
Al Pedigo, Farmer

If we have a problem, there are regulations in effect that need to be enforced.

(b) Response: The Cabinet believes the current regulations in effect are not stringent enough to solve the needs of a Commonwealth for environmental protection from large animal feeding operations and, therefore, is enacting these regulations. The Cabinet maintains that existing regulations are not sufficient and will be proposing a permanent regulation that provides for additional environmental protection such as setbacks.

(62) Subject: Citizen Rights

(a) Comment: Steve Guthrie, Poultry Farmer

Donnie Duncan, Pastor & Chicken Farmer

Most farmers are responsible citizens that intend to take care of the environment and not infringe on other people's rights. I believe our rights as citizens are being taken away through regulation.

(b) Response: The Cabinet concurs that most farmers are responsible citizens with respect to care of and for the environment. The Cabinet is following the duly enacted legal procedures for promulgating administrative regulations which does not infringe on individual's rights. Any proposed permanent regulation will establish only those requirements necessary to protect human health and the environment.

(63) Subject: Citizen Rights

(a) Comment: John Donaldson

I had planned to build four poultry houses on my farm when a local ordinance was passed that less restrictive than what this state is trying to apply and it takes 466 acres, perfectly square to set four poultry houses on. My property rights were taken away and this is what the state is trying to do with this regulation.

(b) Response: Local planning and zoning, or property rights, are not within the jurisdiction of this regulation. The state may duly enact regulations to protect the environment without infringing on property rights. See also response to comments #62 and 72.

(64) Subject: Legislative Process

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse

Why wasn't the legislative process used? I do not feel I have been properly represented.

(b) Response: The regulatory process pursuant to KRS Chapter 13A was used in this instance. The promulgation of an administrative regulation does not preclude the enactment of any legislation that may address similar issues. As of the date of this statement of consideration, no relevant bills have become law. See also response to comment #24.

(65) Subject: Legislative Process

(a) Comment: Chris Rodgers, Citizens Bank of Hickman, Kentucky

The representatives from our state ought to be able to make the judgments as to what regulations are imposed upon us and that no emergency regulations should be put on us.

(b) Response: See response to comments #64 and #24.

(66) Subject: Funding

(a) Comment: Bud Hixson, Kentucky Waterways Alliance

The legislature should support the Division of Water by providing funds for staff dedicated to nonpoint source pollution data gathering and enforcement.

(b) Response: The General Assembly does provide funding for such purposes.

(67) Subject: Funding

(a) Comment: Jim Koostra, Farmer

Can you promise farmers that new regulations won't cost us money?

(b) Response: Costs concerning the new regulations are addressed in the Cabinet's regulatory impact analysis. Certain costs are necessary in order to provide adequate protection for the environment. Any proposed permanent regulation will contain an estimate of the impacts (financial and otherwise) that can reasonably be anticipated.

(68) Subject: Siting Criteria

(a) Comment: Glenda Preston, Poultry Farmer

Phillip Smith

Richard Mattingly

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Carla J. Creasey, Poultry Farmer

John and Rickie Shocklee, Farmers

Charles Shocklee, Farmer

Raymond Highball, Lender

Chris Rodgers, Citizens Bank of Hickman, Kentucky

Alfred O'Reilly, Poultry Farmer

Because of setback requirements a majority of Kentucky's existing CAFOs can not expand their operations and most poultry producers will be unable to build permanent litter storage. The regulations will not allow some farmers to build chicken barns and will leave them to pay for land out of pocket.

(b) Response: Existing operations can expand provided they comply with respective permitting requirements and siting criteria, including setbacks. For existing poultry operations, it was never the intention of the Cabinet to prohibit permanent litter storage structures from being built where those operations are currently sited closer than the proposed regulations would otherwise allow. The regulation has been clarified to make this distinction more clear.

(69) Subject: Siting Criteria

(a) Comment: Dudley Cooper, Ohio County Judge Executive

Let farm families have the option to build poultry houses with a reasonable setback of 500 feet.

(b) Response: Agriculture Water Quality Plan BMP #17 (Poultry Facility Siting) requires a setback of 1500 feet for schools, churches and adjacent cemeteries, incorporated city limits and public parks. In addition, BMP #17 establishes setbacks from dwellings other than growers/or not associated with the operation at 500 feet, except at tunnel ventilation fan outlets, which are to be 750 feet. The Cabinet regulations propose to not distinguish between dwellings and other structures/areas where the public may be. Since dwellings are occupied as often, if not more than these other features, an equal level of protection is deemed necessary.

(70) Subject: Siting Criteria

(a) Comment: Todd Wright, Complex Environmental Manager, Tyson Foods

Danny Payne

Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

What is the justification for the setback distances? Some of the setbacks are too extreme. After four years, only a handful of citations have been issued statewide and there is virtually no history of violations of the environmental performance standards. The setbacks appear to be arbitrary and do not consider the BMPs that now exist or may be developed. Setbacks are excessive for some parameters.

(a) Response: The proposed setbacks are the result of evolving process that the Cabinet has undergone since early 1997. They represent the Cabinet's Best Professional Judgement of what is needed to protect human health and the environment at this time. The poultry setbacks, for example, are based substantially on BMP #17 from the Agriculture Water Quality Plan. One notable exception is dwellings (see response to comment #69 above). Any future BMPs developed will be evaluated at that time.

With respect to the lack of citations issued by the Cabinet statewide on setbacks, that would be expected. During the period in which the swine feeding regulation (401 KAR 5:009) was in effect, no operation was ever permitted under that program. As a result, no setback violations occurred under that program. The current emergency regulation (401 KAR 5:072E), went into effect in February, 2000, and is still in the process of being implemented. It should be noted however, that the Cabinet has identified numerous instances in the past where animal feeding operations were violating permit requirements or other state regulations.

(71) Subject: Siting Criteria

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse
James Duff, Poultry Farmer
Danny Payne
Mike Brawner, Farmer

Protect us from city dwellers moving and building within fifteen hundred feet of our farms. Declare agriculture empowerment zones in each county and do not allow people to move in any closer than 1,500 feet to these zones.

(b) Response: The Cabinet recognizes the concern that farmers have with more individuals moving to rural settings as it relates to complaints about farming activities. In that regard, the Cabinet has recognized existing operations in the course of developing regulations. Existing structures and activities are unaffected by the moving in of new neighbors, with some exceptions. Those include land application setbacks as currently established by BMP #17 for poultry operations. The Cabinet does not, however, propose to establish agriculture empowerment zones in each county since that action exceeds our statutory authority.

(72) Subject: Siting Criteria

(a) Comment: Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture
A facility would need to be in the center of a six-tenths mile diameter circle to meet those requirements. This constitutes land use zoning, with or without local ordinances.

(b) Response: That would be accurate (approximately 0.6 mile) if one assumes that adjacent dwellings surround a given farm on all sides, and that all dwellings are located precisely on the property line. If those assumptions were the situation, then in order to meet a dwelling setback of 1500 feet, a farm would need to be approximately 162 acres in size if in the shape of a circle, or approximately 206 acres if in the shape of a square. On the other hand, if neighboring dwellings are not located directly on the property line as would be expected, then substantially

less acreage could potentially be suitable. As a note, the average farm size in Kentucky as per statistics made available by the Kentucky Agricultural Statistics Service is 149 acres (91,000 farms). This would suggest that numerous farms in Kentucky could be suitable for a CAFO operation under the proposed regulations.

In addition to the above, another factor to consider when evaluating environmental concerns as it relates to farm size is the ability to utilize the manure produced. For a poultry CAFO for example, with 100,000 broilers, some 600 tons/year of litter would be generated. A farm of 162 or 206 acres, as mentioned previously, would likely not be able sufficient to utilize this volume of annual litter generation as a fertilizer due to both agronomic and environmental concerns. In these instances, litter would need to be sent off-site in order to handle properly, which is a common practice in Kentucky with existing large poultry producers. While this regulation only addresses CAFOs, these off-site locations also have similar environmental concerns as the CAFOs that produce the manure. This is noted to simply illustrate some of the environmental challenges in dealing with large animal feeding operations.

Farm size was addressed in BMP # 17 of the Agriculture Water Quality Plan, for instance, which requires that a minimum of 15 acres be present for 1 or 2 poultry houses, with an additional 5 acres for each additional house. This would indicate that 25 acres is suitable for a 4 house poultry operation confining approximately 100,000 broilers, with the poultry houses themselves comprising 2 to 5 acres of the operation. However, the Cabinet has concerns as to whether this amount of acreage is sufficient to address environmental concerns relating to a CAFO. These concerns are further compounded when multiple operations of similar size are located in the same general area.

With these, and other considerations taken into account, the Cabinet used all available resources to determine what setback distances would be reasonable to protect both human health and the environment.

(73) Subject: Siting Criteria

(a) Comment: Jerry Hobgood, Mayor, Sebree, Kentucky

Terry Rhodes, President, Kentucky Corn Growers Association

A setback of 1,500 feet eliminates basically all farms in Webster County. Small tobacco farm owners cannot use chicken litter as a substitute fertilizer to reduce cost of operation. Setbacks from roads for injection and broadcast or other land application methods of livestock manure will virtually eliminate corn producers from utilizing livestock manure as a nutrient source. The regulations as proposed encourage the over application of manure on fields that are not visible to the public.

(b) Response: A frequent misinterpretation of the regulations that has been made relates to how the use of manure would be affected. This regulation would only address manure as it is applied on a farm, if that farm is defined as a CAFO. For example, an individual who purchases or uses manure from a CAFO operation, but is not a CAFO itself, would not be subject to the regulation. In that instance, the operation would need to adhere to the Agriculture Water Quality Plan BMPs. Only operations that are defined as a CAFO, are subject to the proposed regulation.

In Kentucky, the Cabinet has estimated that some 250 operations currently exist which may qualify as a CAFO. In that respect, small tobacco farmers that are not defined as a CAFO, would not be prohibited from using manure as a substitute for commercial fertilizer except where the Agriculture Water Quality Plan BMPs or other regulations otherwise prohibit.

Further, virtually every producer, commodity group, or organization representing a farm interest who made comment at the public hearings indicated that they had either already filed their Agriculture Water Quality Plan, or were implementing it currently. The land application setbacks for poultry CAFOs, for example, were derived in large part from the Agriculture Water Quality Plan BMP #17, to which virtually all poultry producers expressed support.

(74) Subject: Siting Criteria

(a) Comment: Bill Payne, Dairy Producer, Kentucky Milk Producer's Association
Terry Rhodes, President, Kentucky Corn Growers Association
John Donaldson

Very few sites will conform when siting a new barn or operation. The land application area setbacks that pertain to property lines, roadways, and dwellings have no bearing on water quality. Setbacks have nothing to do with water quality except for blue line streams, wells, sink holes, and topography. Due to manure application setbacks farmers can not keep applications as thin as they ought to.

(b) Response: It is not the intent of the regulation to ensure that all farms have the potential for becoming a CAFO. Rather, it is the intent of the regulations to protect human health and the environment. Not every farm is suitable to confine the number of animals that would constitute a CAFO. Many of the problems that Kentucky has, and the Cabinet has identified thus far with large animal feeding operations, are directly related to a lack of acreage at that operation. Whether the issue is water quality, odor, or inability to handle the manure being produced at that site, sufficient acreage is often a vital component. Setbacks are one means of addressing that issue. See also response to comment # 72.

With respect to property lines, the proposed regulation does not address property lines. The Agriculture Water Quality Plan does however establish setbacks for property lines. Dwellings are listed in the proposed regulation with regard to setbacks in order to address odor. The Agriculture Water Quality Plan similarly addresses dwellings, churches, etc. Primary and secondary roads are listed in the proposed regulation to address odor as well.

(75) Subject: Siting Criteria

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club
Aloma Dew, Sierra Club

Poultry setbacks are less than that of swine, beef, or dairy. There are no property line setbacks for poultry. A setback requirement to property lines is required, of at least 750 feet. Setbacks also need to be required for land application of manure. What is the rationale?

(b) Response: As previously discussed, the poultry setbacks were primarily based on the Agriculture Water Quality Plan BMP #17. Similar setback BMPs for swine, beef, or dairy did not exist. In addition, the dry nature of poultry litter (provided it is kept dry), lends itself to less odor than does wet manure, which is typically the case with swine, dairy and some beef operations.

The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide reasonable protection of human health and the environment. Setbacks are proposed for land application of manure at a CAFO.

(76) Subject: Siting Criteria

(a) Comment: Mark Redding, President, Kentucky Pork Producers Association
Dennis Liptrap, IPKY, Inc.

Why has the NREPC used some facility siting and manure application setback distances for poultry that are different from those for swine, beef, or dairy?

(b) Response: See response to comment # 75.

(77) Subject: Siting Criteria

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

How was siting criteria established? What criteria or analysis was used to determine appropriate setbacks?

(b) Response: See responses to comments #70 and #75. In addition, the Cabinet used various air dispersion models, risk information, and other research tools to evaluate the potential odor, air toxics, pathogen, and airborne health impacts from these operations. The setbacks represent the result of that research.

(78) Subject: Siting Criteria

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

Clarify Section 3(2)(c). Are you restricting the placement of a structure in a sinkhole?

(b) Response: The proposed regulation does prohibit the placement of a livestock barn, poultry house, or lagoon in a sinkhole or other enclosed depression where subsidence is evident.

(79) Subject: Siting Criteria

(a) Comment: Charles Miller, Farmer

The setbacks are designed primarily to protect the environment. Have the effects of setbacks on people who live in the area been considered?

(b) Response: Yes, the setbacks have taken into consideration potential effects on people. See response to comment # 77.

(80) Subject: Siting Criteria

(a) Comment: Dennis Liptrap, IPKY, Inc.

What is the justification for wide application setbacks to public roads in the absence of other setbacks?

(b) Response: See response to comment # 74.

(81) Subject: Siting Criteria

(a) Comment: Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Establish setbacks for land application that are realistic and consistent for all CAFOs.

(b) Response: See response to comment # 75.

(82) Subject: Siting Criteria

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Angela Leach, Farmer

Heather Roe Mahoney, Democracy Resource Center

Charles Shocklee, Farmer

Todd Wright, Complex Environmental Manager, Tyson Foods, Inc.

Existing farms that do not meet the new siting guidelines cannot build a litter storage shed. How does the Cabinet plan to address this issue that has an immediate impact on existing farms? Does the siting criteria apply to all new or expanded barns and lagoons owned or operated by the permittee or on the land where the CAFO is located even though they are not used in connection with the CAFO?

(b) Response: See response to comment # 68. For existing poultry operations, it was never the intention of the Cabinet to prohibit permanent litter storage structures from being built where those operations are currently sited closer than the proposed regulations would otherwise allow. The regulation has been clarified to make this distinction more clear. The agency has been implementing the emergency regulation with this interpretation from the onset.

The regulation only applies to structures and activities on operations defined as CAFOs. Any barn, lagoon, poultry house, litter storage structure, composting site, or waste handling structure directly associated with the confinement of animals, that is located on the farm defined as a CAFO, would be affected. Other structures, activities, or land, not owned or carried out by the permittee which are not located on the same farm as the CAFO, would not be affected by this proposed regulation.

(83) Subject: Siting Criteria

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

During the June 1999 comment period on the Groundwater Protection Plan for Poultry Facilities on less than ten acres, the Cabinet responded to comments by stating that setbacks to roads, schools, and churches do not relate to the protection of groundwater. How do setbacks to roads, schools, churches, and other buildings protect the waters of Kentucky now when they could not in June 1999?

(b) Response: Setbacks to roads, schools, churches, and other buildings are not established for the protection of water quality. Rather, they are established for the protection of human health and the environment as it relates to odor, air toxics, pathogens, and other concerns.

The Cabinet would note that setbacks for these same features are established by the Agriculture Water Quality Plan BMP # 17 for poultry operations. The Kentucky Poultry Federation expressed support of the Agriculture Water Quality Plan in its comments made during the public hearings. The Cabinet used these established setbacks as the basis for the majority of the proposed setbacks for poultry CAFOs.

(84) Subject: Siting Criteria

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

The use of setbacks as a surrogate to proper management of odors, airborne toxics, disease-causing organisms and other air contaminants is inappropriate. Setbacks should be required under the KPDES and water quality authority to assure prevention of water pollution and under 401 KAR Chapters 30, 45, and 47 to minimize nuisances, by providing geographic isolation of facilities and their inherent odors and vectors. Setbacks should not be considered a sufficient stand-alone pollution control strategy; there should be a general prohibition of nuisance or water pollution. The National Pork Producer's Association recommends new hog operations be located 1,500 feet from houses and 2,500 feet from schools, hospitals and churches. Research and anecdotal evidence suggests that odors are a problem at far greater distances. More restrictive setbacks have been adopted by other states and localities. The Council also recommends that the Cabinet consider allowing a variance from the setbacks for demonstrated

methods of management that result in no nuisance condition or water pollution, and that the Cabinet differentiate in setback requirements between land application by spray irrigation, wet management by incorporation, and dry waste management.

Any setbacks which are directed at preventing nuisance must be crafted so as to fully protect the use and enjoyment of other properties. Assume the most sensitive land uses for adjoining lands and establish setbacks based on the existence of the sensitive land uses at the property boundary.

Appropriate setbacks need to apply to all activities (including land application) conducted after the enactment of the regulations, because there is no pre-existing right to cause water pollution or a nuisance.

(b) Response: These regulations are not only issued pursuant to the Cabinet with authority under the Clean Water Act. The regulations is also issued pursuant to the Cabinet's authority under KRS 224.060.20-110 and 20-120, which gives the Cabinet authority to regulate air pollution and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems. It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet can issue permits for construction of sewage systems. The Cabinet therefore, has authority beyond the Clean Water Act to issue these individual regulations, and the regulations do not relate to Clean Water Act permits alone. Since regulations are not solely based on the Cabinets authority under the Clean Water Act permit, the issue of whether or not they are "more stringent than" the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the Clean Water Act.

With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or nuisance ordinances. Neighbors have common law rights concerning nuisance that can also be addressed in the courts.

(85) Subject: Siting Criteria

(a) Comment: Chetan Talwalker, Democracy Resource Center

Heather Roe Mahoney, Democracy Resource Center

Liz Natter, Director, Democracy Resource Center

Setbacks are not protective enough. The setbacks for dwellings, lakes, streams, rivers, water wells, sink holes and other Karst features which might lead to water wells, should be increased for swine and poultry facilities, including land application. Setbacks to property lines should be applied to swine and poultry facilities. Lagoons should not be allowed to locate in karst topography, the saturated zone, over springs, or in areas where there is a significant likelihood of subsidence due to previous mining activities. Site characterization should be performed.

(b) Response: See response to comment # 77. The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide reasonable protection of human health and the environment. With respect to lagoons in karst topography, the regulation does propose to prohibit such over a sinkhole or other enclosed depression where subsidence is evident. Other siting concerns would be addressed during the case-by-case permitting of each CAFO operation.

(86) Subject: Siting Criteria

(a) Comment: Ann Wilkerson, Retired Teacher

Norma Reynolds

Corrine Whitehead, Coalition for Health Concern

Siting criteria is not adequate to protect neighbors from the odor, flies, dust, and rodents from these operations. Two schools in Hopkins County are well beyond the 1,500 foot setback, yet many days the elementary children are unable to go outside for recess due to the stench created by harmful elements in the air. People and churches near a large poultry operation are unable to enjoy their property, which is their right. Poultry house setbacks should be moved back at least 3,000 feet from a dwelling, church or school and 750 feet from a property line; Swine barns should be at least one mile from a dwelling, church or school; and swine and poultry barns should be 3,000 feet from a river, well, or water source.

(b) Response: See response to comment # 77. The Cabinet recognizes the many issues associated with CAFOs, including water pollution, odor, disease, land values, etc. The Cabinet used all of the resources available to determine what setback distances would be reasonable to protect both human health and the environment.

(87) Subject: Siting Criteria

(a) Comment: Kathy Lyons

Sue Anne Salmon

Susan Crosswait, Kentuckians for the Commonwealth

Why are setbacks from privately owned water sources such as private wells less than those protecting public water supplies? Rural residents should be afforded the same protections from bad neighbors as city dwellers.

(b) Response: The Cabinet distinguished between water wells and public water supply surface intakes due to the differences in which pollutant transport generally occurs with those respective features. This should not be viewed as a differing level of protection for either rural or urban residents. Rather, the Cabinet intends to afford equal protection among all residents within the Commonwealth.

(88) Subject: Siting Criteria

(a) Comment: Joe Knoepfler

Kathy Lyons

Liz Natter, Director, Democracy Resource Center

Setbacks are inadequate to protect private or public properties in rural areas. Increase the setbacks and institute maximum density regulations as soon as possible. Include a narrative standard preventing facilities from creating a nuisance.

(b) Response: See responses to comment #s 77 and 84. The Cabinet has chosen not to address density of animals allowed. The agency would note that handling of manure in an appropriate manner, both from an agronomic and environmental perspective, will address animal density concerns in many respects. Further, the use of setbacks, deals with other aspects of the density issue. With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or nuisance ordinances.

(89) Subject: Siting Criteria

(a) Comment: Pennie A. DuBarry, Citizen

Please ensure that all setbacks to a dwelling be at least one mile from a hog barn, chicken house or lagoon with more than 1,000 animal units. These siting requirements are the only meaningful protection neighbors have from odor, disease organisms, and flies which can carry disease.

(b) Response: See response to comment # 77.

(90) Subject: Siting Criteria

(a) Comment: Danny Payne

My existing \$110,000 poultry house is within 100 feet of a property line. If a storm blows my poultry house down, will I be able to rebuild where my concrete foundation and leveling of land is already in place?

(b) Response: In the event of catastrophic destruction, it would be reasonable to conclude that the operation could be constructed back to its original size without having to adhere to new siting requirements.

(91) Subject: Siting Criteria

(a) Comment: Danny Payne

Spreading litter close to a neighbor should only be done once a year and incorporated. Litter could also be spread in the winter when neighbors aren't outside very long. Also, dry litter from storage sheds reduces odor.

(b) Response: The Cabinet does not propose to restrict the number of times that poultry litter can be spread. However, the Cabinet will require in the course of permitting when litter cannot be spread, such as when the ground is frozen, saturated, or snow covered. With respect to litter sheds, the Cabinet would agree that permanent litter storage is an excellent method of preventing odor and stormwater runoff from exposed litter.

(92) Subject: Siting Criteria

(a) Comment: Ray Barry, Kentucky Conservation Committee

Susan Crosswait, Kentuckians for the Commonwealth

Setbacks in the emergency regulation are not protective of air quality, water quality and disease vectors. They impose unbreathable air on neighbors, allow runoff into streams, and expose the area to fly infestations. We suggest at least one mile from a hog barn or lagoon to a dwelling and 3,000 feet from a chicken CAFO to a dwelling. All CAFOs should be at least 750 feet from the property line. Waste lagoons should not be allowed in floodplains, near sink holes, over known cave and karst systems or close to streams. Setbacks should also be required from land which has manure applied. Density limits should also be imposed.

(b) Response: See response to comment #s 77, 85 and 88.

(93) Subject: Siting Criteria

(a) Comment: Susan Crosswait, Kentuckians for the Commonwealth

There must be some setback requirements from 500-1,000 animal units

(b) Response: The regulation as proposed addresses CAFOs. It is possible for an operation less than 1000 animal units to be defined as a CAFO if that operation seeks to have a direct discharge of waste to waters of the Commonwealth or is designated such by water quality problems. In that event, the provisions of this regulation could apply to that operation. It should be noted however, that no CAFO operation has sought to have a direct discharge permit in Kentucky to date.

(94) Subject: Siting Criteria

(a) Comment: Susan Crosswait, Kentuckians for the Commonwealth

Consider tiering setbacks.

(b) Response: The Cabinet has considered tiering of setbacks. Looking at the entire livestock and poultry industry in Kentucky, siting criteria does in fact exist at tiered levels already. For all operations greater than 10 acres in size, the requirements (including setbacks) of the Agriculture Water Quality Plan would apply. For operations that are defined as CAFOs, or generally the largest operations, then the requirements (including setbacks) of the proposed regulation would apply. The Cabinet does not propose a distinction between CAFOs of varying size in this regulation.

(95) Subject: Siting Criteria

(a) Comment: Sue Whayne

Since odors do not stop at the contract grower's property line, setbacks should be three times farther than the regulations stipulate when growers spread manure. The flies and smell are unbearable. Setbacks from dwellings need to be at least 5,000 feet and 800 feet from water wells.

(b) Response: See responses to comments # 77, 85, and 88.

(96) Subject: Siting Criteria

(a) Comment: Alfred O'Reilly, Poultry Farmer

There is no provision for topography or geography. There is no appeal process or format to apply for a variance.

(b) Response: Topography or geography would be accounted for during the course of the permitting process. For example, the application of poultry litter on steeply sloped land may be prohibited by the operation's nutrient management plan. Each permit action made by the Cabinet is subject to an appeal process. The regulation also addresses variances from setbacks in Section 3(3)(d).

(97) Subject: Additional Regulatory Requirements Needed

(a) Comment: Tom Fitzgerald, Kentucky Resources Council
Aloma Dew, Sierra Club

The regulations should also include provisions regarding neighbor and public notice, disclosure of compliance history of all owners and controllers, and financial assurance that some funds will be set aside to assure proper closure of the facility and clean-up of any spill or release. There should also be a requirement for maintaining liability insurance to pay any judgments or claims from third parties that a nuisance has been created by the facility, and to pay any third party injury claims or loss of property value.

Appropriate reporting obligations should be imposed as will enable the agency to properly monitor implementation of the law and identify areas of concern. Immediate reporting of any releases, spills, leaks or groundwater contamination should be required. Density controls are needed for the number of animal units in a given area. Zones of use are needed for nutrient laden waters or litter so that the nutrients would be locally produced and locally used. Riparian buffer zones such as constructed wetlands are needed. Redundant nutrient barriers and linings should be required, especially in Karst areas.

(b) Response: The existing KPDES regulations already address public notice and compliance matters. The integrator liability provision addresses how the producer and the processing facility are responsible for complying with environmental requirements related to the

KPDES permit. With respect to liability insurance, the regulation does not propose to address that issue. Monitoring and reporting will be a condition of any KPDES permit issued.

With respect to density controls, please refer to response to comment # 88. As it relates to riparian buffer zones, constructed wetlands, and similar types of filter strips and buffer zones, those practices are not specifically addressed in the proposed regulation. The Agriculture Water Quality Plan will address some of these aspects as well.

(98) Subject: Additional Regulatory Requirements Needed

(a) Comment: Sue Anne Salmon

The Cabinets regulations are a good starting point, but should be strengthened to include: 1) Clear guidelines on liability for disease or environmental problems be shared by the corporation that contracts with the farmer; 2) Prohibition of using dead or diseased chickens as part of chicken manure fertilizer; 3) Prohibition of mixing sewage sludge with animal manure to use as fertilizer; 4) Clear guidelines on methods and frequency of animal waste fertilizer application; 5) Prohibition of feeding animal waste to other animals; 6) Setbacks that are based on odor detection by neighboring residents, schools, churches or businesses; 7) Enforcement of laws that require tarps on all trucks hauling animal waste or dead animals; and 8) Enforcement of truck weight and speed limits for vehicles hauling CAFO products.

(b) Response: The proposed regulation addresses integrator liability as it relates to compliance with KPDES permit requirements. The proposed regulation does not expressly prohibit the use of dead or diseased chickens as a fertilizer. The proper disposal of dead animals falls within the jurisdiction of the State Veterinarian. The regulation does not deal with the use of animal manure and subsequent mixing with sewage sludge. This is addressed by other state and federal regulations. The regulation does not address feeding of animal manure to other animals, since that is beyond the scope of this regulation. See response to comments # 77 and 86 as it relates to setbacks to address odor. The regulation does not address either transportation of dead animals, animal waste, truck weight or speed limits since that is beyond the scope of this regulation.

(99) Subject: Additional Regulatory Requirements Needed

(a) Comment: Liz Natter, Director, Democracy Resource Center

Require monitoring of wastes for disease organisms and reporting of any disease outbreak among swine. Require a plan for treatment to destroy pathogens. Require that waste not be land applied at a rate not exceeding the soil's infiltration rate. Require that waste be applied on a field for a maximum of three out of four years and that soil pH be regulated. Land application should be prohibited in the floodplain and on wetlands. Require filter strips. Prohibit land application of hog waste on crops grown for human consumption. The regulations should take into account the environmental effects of atmospheric nitrogen deposition and consider the aggregate effect of facilities. Site characterization should be performed. Dams smaller than those required to be permitted should be checked for structural integrity.

(b) Response: All aspects related to land application of animal waste will be addressed in the course of the KPDES permitting process, rather than in the proposed regulation. Specifically, the Comprehensive Nutrient Management Plan (CNMP), the Agriculture Water Quality Plan, and any applicable NRCS requirements will be evaluated collectively in the development of an appropriate nutrient management plan for a given CAFO operation.

(100) Subject: Additional Regulatory Requirements Needed

(a) Comment: Liz Natter, Director, Democracy Resource Center

Lagoons will be designed to fail at an unacceptable frequency by allowing a discharge in the case of a 25 year, 24 hour storm.

(b) Response: The Cabinet recognizes the concern, but notes that the 25 year, 24 hour storm event provision is a federal requirement. The Cabinet does not propose to change the federal regulations.

(101) Subject: Additional Regulatory Requirements Needed

(a) Comment: Corrine Whitehead, Coalition for Health Concern

The management of manure by requiring sewage treatment facilities comparable to that of cities must be required.

(b) Response: See response to comment # 11.

(102) Subject: Additional Regulatory Requirements Needed

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

Standards of Performance, beyond setbacks should be identified, including: siting requirements and setbacks; construction and design requirements for facilities; protection against catastrophic failure, leakage, and odor; characterization of any geological setting proposed for intensive operations or land application of wastes from such operations; liner and seepage standards for lagoons; characterization of wastes and wastewaters for all potential pollutants including disinfectants, pesticides, antibiotics, hormones, heavy metals, and viruses; discussion of chemical reactions associated with waste disposal; evaluation of long-term concentration of salts and metals in soils used for land application; assessment of odors, air pollution, potential for spread of disease, and water pollution; the feasibility of alternative waste and wastewater treatment systems; lagoon design standards including liners and side walls with a design requirement of preventing leakage, and groundwater monitoring or leak detection systems; adequate distance from the base of the lagoon liner to the seasonal high water table; lagoon sizing should be sufficient to accommodate probable maximum precipitation event without failure or overtopping, and to accommodate seasonal demands where land application is inappropriate due to frozen soil or soil saturation; berming that will prevent migration of wastewaters to waters of the Commonwealth in the event of structural failure of the containment; lagoon influent and effluent monitoring; the name and address of the responsible party; designs and calculations for controlling run-on and runoff from all waste storage and disposal areas in order to prevent contamination or pollution of waters of the Commonwealth; standards to address nuisance and health problems associated with worker and public exposure to hydrogen sulfide and ammonia; odor control measures for all phases of the operation; require consideration of separate management of liquids and solids and covered manure storage tanks; landspread wastes and wastewaters should be treated to reduce pathogens prior to land-application; no land application to frozen soil; prohibition of aerial spraying and requirement for immediate incorporation and injection. A requirement should be included that past compliance history of all owners and controllers of the applicant be disclosed.

(b) Response: See response to comments#97, 98 and 99. In addition, the Cabinet recognizes the many environmental issues related to CAFOs. However, the Cabinet has chosen to only address certain key aspects in the proposed regulation, while utilizing the federal NPDES program and associated permitting process to deal with the majority of the site specific issues.

(103) Subject: Best Available Control Technology

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

No new facilities relying on anaerobic lagoons and landfarming wastes or wastewaters should be allowed for intensive hog production operations. Aerobic treatment of wastes is available and preferable from an emission and odor standpoint. For any new proposed facility, the applicant should be required to utilize the best available control technology, including aerobic systems such as oxidation ditches, aerated storage tanks, and aerated lagoons, or other systems to maintain manure in an aerobic condition; or a controlled anaerobic digester with gas treatment.

(b) Response: The Cabinet has chosen not to address this issue in the proposed regulation. EPA is currently in the process of evaluating treatment technologies for CAFOs nationwide and will update the effluent guidelines for that category of operations in the future. Current BAT under 40 CFR 412.13 requires that there, "... be no discharge of process waste water pollutants to navigable waters." The federal guideline does not, however, dictate the type of technology that must be utilized to achieve that standard.

(104) Subject: Water Usage

(a) Comment: Patty Wilson

What will happen in a dry year when the hog and poultry farms have drained the water supply, leaving none for human consumption and use?

(b) Response: The use of water generally is addressed through the issuance of water withdrawal permits pursuant to 401 KAR 4:010. However, KRS 151.140 exempts agricultural users from having to obtain a water withdrawal permit. But in times of extreme drought, the cabinet, upon declaration of a water emergency by the governor, may temporarily allocate the available water supply among water users, per KRS 151.200.

(105) Subject: Owner / Operator Liability

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse
Meldrum Harvey, Retired Physician & Farmer
Richard Mattingly, Farmer
Charles Shocklee, Farmer

Farmers do not need or want the integrator to control this aspect of their businesses. The farmers, not the integrators have to assume responsibilities for their actions.

(b) Response: Farmers do have responsibility for their actions. What this administrative regulation provides is that an additional party, the integrator, is responsible to the Commonwealth and general public for environmental problems at the operation if the farmer fails to properly operate the facility.

(106) Subject: Owner / Operator Liability

(a) Comment: Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Mark Redding, President, Kentucky Pork Producers Association

The Cabinet's co-permitting provision is devastating to Kentucky's livestock and poultry producers because the permit liability creates a huge disincentive for anyone considering doing business in Kentucky. Co-permitting does not protect the producer, large or small. What business or fellow farmer would choose to enter into a contract with a Kentucky producer if they

are essentially liable for every misstep that producer makes? Co-permitting and similar contractual liability schemes put Kentucky agriculture at a clear competitive disadvantage to producers in other states and would discourage cooperative efforts and efficient production among Kentucky farmers.

(b) Response: Co-permitting is intended to protect the environment and neighbors. As noted in Response 29 above, the EPA is requiring co-permitting throughout the nation for these operations. Thus, Kentuckians are not left at a competitive disadvantage with other states by implementing this nationwide EPA requirement.

(107) Subject: Owner / Operator Liability

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
Integrator liability is the key and should remain in the regulation. In Section 2(1)(c), output should be included in addition to input. Any application or discharge is a point source.

(b) Response: We agree integrator liability should remain in the regulation, we disagree output control should be considered, since the output animals are sold at a point in time.

(108) Subject: Owner / Operator Liability

(a) Comment: Charles Miller, Farmer

Sam Moore, Farmer

Richard Mattingly, Farmer

Greg Hefton, Poultry Farmer

Alan Lutz, Swine Farmer

Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Spence Jarnigan, ConAgra Poultry Company

Co-permitting will place Kentucky farmers at a tremendous disadvantage. Co-permitting will severely limit the feeder cattle market. How will weaning facilities, cattle holding facilities, poultry litter removal services, and buyer stations be addressed regarding co-permitting? What affect will this have on the marketing capabilities of beef cattle in Kentucky? What about milk processors and livestock markets? Others who would be affected include corporate animal processors, nutritional consultants, agronomic consultants who direct management of land application areas, and contractors who remove carcasses for rendering. The regulation affects and includes certain production cooperatives, livestock pre-conditioning, order buying, commercial feedlots, auction houses and racetrack stables. The regulation will also affect smaller farmers, for example, if they choose to place pigs out on contract with a local farmer who may have facilities but not the capital or marketing ability to own his own animals.

(b) Response: If a farm is of size to obtain a CAFO permit, it should meet the regulations. See Responses to Questions 29, 106 above.

(109) Subject: Owner / Operator Liability

(a) Comment: Dennis O. Liptrap, IPKY, Inc.
The Unified Strategy's language on corporate liability is discriminatory because it only implicates one business entity, corporations, and therefore exempts individuals, partnerships, etc. when they are the contractor and owner of livestock.

(b) Response: The Cabinet's administrative regulation, and the EPA's regulations found in the Code of Federal Regulation, do not refer to "corporation" as co-permittees. They refer to

“person”. Individuals, partnerships and other business entities meet the definition of “person” and are not exempted from this requirement.

(110) Subject: Owner / Operator Liability

(a) Comment: Dennis O. Liptrap, IPKY, Inc.

The Cabinet does not have any recourse for recovering damage to the environment except civil penalty limited to a maximum of \$25,000 per day of violation. How will co-permitting improve the ability to collect damages?

(b) Response: Co-permitting will give the state a second entity to perform remediation. Co-permitting will improve the ability of the Commonwealth to obtain compliance at the facility by making several persons liable for compliance of the facility. In addition, co-permitting will ensure that if one co-permittee becomes unable to financially complete any remediation necessary after a violation, that another party will be held responsible for that remediation. The civil penalty is not used for remediation and is in addition to the remediation each entity is required to perform.

(111) Subject: Owner / Operator Liability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

During the June 1999 comment period on the Groundwater Protection Plan for Poultry Facilities on less than ten acres, the Cabinet responded to comments by stating that under Kentucky statutes only the person performing the activity is responsible for the plan. Is the inclusion of integrator liability on the permit in the CAFO regulation a direct contradiction of the Cabinet’s June 1999 position and a violation of the previously cited statutes?

(b) Response: The Cabinet’s current decision is based on the EPA strategy as set forth in the document quoted in Response 29 above. The Groundwater Protection Plan for Poultry Facilities is not a part of the KPDES Program and was not based upon these federal requirements for co-permittees. Thus, the issues involving the Groundwater Protection Plan were different than those involving the KPDES Program.

(112) Subject: Owner / Operator Liability

(a) Comment: Bud Hixson, Kentucky Waterways Alliance

Ann Wilkerson, Retired Teacher

Barbara Thomas, McLean County Citizens Against Factory Farms

Joan Denton, Sierra Club & KFTC

Pennie A. DuBarry, Citizen

Ray Barry, Kentucky Conservation Committee

Susan Crosswait, Kentuckians for the Commonwealth

Patty Wilson

Sue Whayne

Corrine Whitehead, Coalition for Health Concern

Liz Natter, Director, Democracy Resource Center

The integrator liability provision is an important and fair rule. Integrator liability protects the farmer. Hog and chicken corporations own and dictate how and when the animals are fed, cooled, heated and sold. The corporations that contract for the production of animals are responsible for many decisions that determine how much waste is produced. They have a great deal of say in how the animals are raised, numbers of animals confined, design of waste

management systems, and siting of the facilities. Growers have no control and are left to dispose of the waste. The public should not have to pay for pollution caused by business operations that go bust for any reason. The average Kentucky farmer's income is \$14,500.00. The number of operations affected by the proposed rules are less than 0.2 percent of the total of Kentucky farms. Stronger rules are needed to protect the public from this small but powerful industrial sector. Impose the original provisions from the 1997 emergency regulations regarding relatedness, especially with regard to corporate farms and common investors, as well as common land application areas. Corporate integrator liability should extend beyond closure.

(b) Response: The Cabinet believes these rules are sufficient to protect the environment.

(113) Subject: Owner / Operator Liability

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

Chetan Talwalker, Democracy and Resource Center

Heather Roe Mahoney, Democracy and Resource Center

Kathy Lyons

We strongly support the concept of integrator liability. The corporate contract model of production of livestock is attractive to the corporations that control the production, because through contracts, they shift the risks down the chain while exerting significant control and reaping the lion's share of the profits up the chain. Those who control the production in the animals and the inputs should bear joint and primary responsibility for environmental compliance. Hog lagoons can be extremely costly to close. Mishandled poultry waste can also result in environmental liability. The taxpayers of Kentucky should not be forced to bear this liability and risk. Multi-national corporate integrators are using farmers for their own purposes. The owners of the land on which these facilities are located are held responsible despite the fact that they do not own the animals. Most of the owners are already in debt to build these operations and will not be financially able to clean up spills and runoff. Why should the burden of environmental liability be placed on Kentucky farmers and taxpayers and not on these billion dollar companies?

(b) Response: The Cabinet agrees that difficulties will result when some owners are unable to payoff their debt and perform remediation. This is why the Cabinet supports EPA's requirement for integrator liability.

(114) Subject: Owner / Operator Liability

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club

The National Strategy states that corporate entities that exercise substantial operation or control of a CAFO must be co-permitted along with the CAFO as operators. Vertically integrated companies that created the industrial meat and poultry systems can prevent problems on the front end by not allowing too many houses to be built in the wrong location.

(b) Response: The Cabinet agrees that larger corporations can prevent problems on the front end by monitoring farmers who contract with them.

(115) Subject: Owner / Operator Liability

(a) Comment: Jim Koostra, Farmer

Is integrator liability only a way to allow the Sierra Club and the State of Kentucky to sue us in these huge lawsuits like we lost at the tobacco industry and like the gun industry is going?

(b) Response: The integrator liability provision does not give the Sierra Club the authority to sue farmers. The Cabinet may bring an action to require compliance with the law, or for violation of the law, but does not bring general suits in tort against the industry.

(116) Subject: Owner / Operator Liability

(a) Comment: Dot Holbrook, Resident

Karol Welch, Magistrate, Hopkins County

Kathy Lyons

To ask a business to be regulated is no different than regulating anything else that harms our state. The large companies are coming into Kentucky and taking advantage of us because we're a poor rural state. The large poultry and meat producing industries are simply in it for profit. Why should a contract between a farmer and a major poultry producing company excuse that company from the liability resulting from its profit making activities?

(b) Response: The Cabinet agrees large producers should be responsible under the terms of the regulation.

(117) Subject: Owner / Operator Liability

(a) Comment: Joe Knoepfler

Thank you for helping to make Kentucky the first state with integrator liability. It will help the industry change its litter management practices. Farming has become just another business and should be liable for regulatory compliance like all other businesses.

(b) Response: Kentucky is not the only state with integrator liability. It is the EPA's position that all states should have integrator liability. See Response 29 above.

(118) Subject: Owner / Operator Liability

(a) Comment: Al Pedigo, Farmer

There is no other industry in the state that we are asking shared liability of. If integrator liability is included, these company people will be with us every minute. Are we going to hold the fertilizer companies liable if we spread fertilizer on the field and it runs off? Are we going to hold the chemical companies liable?

(b) Response: The NPDES program regulates owners/operators, and consequently so does the KPDES program. In that respect the program is no different than any other environmental program. Integrators are simply within the universe of owners/operators because of the role that they play. Having integrators within the universe of owners/operators in fact benefits the farmer because there is shared liability for the environmental impacts of CAFOs.

(119) Subject: Owner / Operator Liability

(a) Comment: Norma Reynolds

The large companies should take some of their money and see that these operators get on the right track and that they continue to operate properly. One example of a problem is the watering systems in the houses must be cleaned regularly or they get stopped up and leak, which causes the houses to be wet, creating a terrible odor and the loss of chickens.

(b) Response: The comment is noted

(120) Subject: Owner / Operator Liability

(a) Comment: Mark Redding, President, Kentucky Pork Producers Association

Where is shared liability listed in the National Strategy?

(b) Response: See Response 29 above.

(121) Subject: Owner / Operator Liability

(a) Comment: Spence Jarnigan, General Manager, ConAgra Poultry Operations

Co-permitting would place unknown risks on corporate entities that have no direct control over activities such as grazing operations and row crop production. These activities are outside the scope of contractual liability. Also, poultry integrators could reduce flock size on each farm to avoid permitting, placing contract growers under immense financial pressure. The first time an integrator is prosecuted for actions of a grower, integrators would drop individual growers and build corporate farms. Small family-owned poultry farms would cease to exist.

(b) Response: Integrators can enter into contracts with the operators addressing these environmental issues. For example, this very comment indicates that integrators have the power to “reduce flock size on each farm”. There are no laws at the present time in Kentucky prohibiting operators from building corporate farms. This administrative regulation does not deal with small family owned poultry farms but rather regulates only large concentrated animal feeding operations.

(122) Subject: Owner / Operator Liability

(a) Comment: Charles Shocklee, Farmer

There is no need for integrator intervention with a four house operation.

(b) Response: The Cabinet believes that if an operation is large enough to be considered a concentrated animal feeding operation, integrator intervention and responsibility is needed.

(123) Subject: Priorities

(a) Comment: Kimberly Boswell, Poultry Farmer, Nurse

With over fifty thousand straight-line sewage systems in this state putting human waste directly into the waterways of Kentucky, we need to take a look at real priorities.

(b) Response: The Cabinet agrees that straight-pipe sewage discharges and failing on-site sewage systems constitute a significant environmental and human health problem in Kentucky. The cabinet is working with the Cabinet for Health Services, local health departments, and other local/state/federal entities to address this issue. The Watershed Management process will be targeting high priority areas for the implementation of corrective measures in the near future. However, the existence of other environmental issues does not diminish the importance of implementing a strategy to control the environmental impacts from agricultural activities.

(124) Subject: Priorities

(a) Comment: Charles Mann, President, Citizens Deposit Bank, Calhoun, Kentucky

My poultry operation provides Owensboro with their poultry needs and I’m having less impact on the environment than my state approved and permitted septic system. Time would be better spent addressing the budget, health care, child care and the education system rather than CAFOs.

(b) Response: See response to comment #123.

(125) Subject: Litter Storage Facility

(a) Comment: Jerry Whitledge, Farmer

Donnie Duncan, Pastor & Chicken Farmer

Angela Leach, Farmer
Meldrum Harvey, Retired Physician & Farmer
Richard Mattingly, Farmer
Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau
Loraine Buckingham, Farmer
Charles Shocklee, Farmer

Building a six-month litter storage facility will cost 25 to 30 thousand dollars, as much as 65 thousand. Permanent litter storage is already included in the state Agriculture Water Quality Plan. If it is necessary, farmers need time to complete these facilities and cost-share money or financing.

(b) Response: The Cabinet recognizes the additional cost of building a permanent litter storage structure. However, the Cabinet also believes that proper waste handling is essential for the protection of human health and the environment. The ancillary benefits of retaining the nutrient value of the litter and easing the litter handling and cleanout aspects are also noted.

The Cabinet would also note that additional cost-share dollars were added during the legislative session this year. For further information about the availability of cost-share funds, please contact the Division of Conservation with the Cabinet.

With respect to the requirements of the Agriculture Water Quality Plan, several commentors indicated that permanent litter storage is already a requirement of the Plan, which requires implementation by October, 2001. The Cabinet concurs that permanent litter storage should be required and that time is necessary for operations to come into compliance with this requirement. As such, the proposed regulation has incorporated the Agriculture Water Quality Plan implementation date of October, 2001 as the construction deadline for permanent litter storage structures at poultry CAFOs.

(126) Subject: Litter Storage Facility

(a) Comment: Tim Hughes, Producer

Meldrum Harvey, Retired Physician & Farmer

Litter storage on the ground is safe if it's properly located and constructed. Regulations don't permit this. I cannot afford to build a litter storage building. Please list the number of manure application violations that have occurred in Kentucky over the past ten years. Please provide the scientific evidence that proves the need for these facilities.

(b) Response: See response to Comment # 125. Many commentors stated in both verbal and written comments that permanent litter storage is already a requirement of the Agriculture Water Quality Plan. The Cabinet has inspected and recorded numerous instances where litter was being stored outside causing environmental problems and public complaints. With respect to the scientific evidence, there is ample evidence that litter stockpiled outside, exposed to rainfall, results in greater environmental problems than if stored under cover.

(127) Subject: Litter Storage Facility

(a) Comment: Carla J. Creasey, Poultry Farmer

We have no funds for a litter storage facility. It is useless to us since we make arrangements for litter disposal prior to removing it from the barns.

(b) Response: In the event that litter is never stored onsite outside of the poultry house, a permanent litter storage structure would not be required.

(128) Subject: Litter Storage Facility

(a) Comment: Alvin Sandefur, Farmer

Spreader and truck traffic is greatly increased if the material is not allowed to be hauled directly from the poultry houses to the use sites.

(b) Response: There is no prohibition for hauling litter directly to the use sites. If hauled to the field on a CAFO operation, then it must be stored there accordingly. If hauled to the field on another operation, then it must be stored in accordance with the Agriculture Water Quality Plan.

(129) Subject: Litter Storage Facility

(a) Comment: Mark Redding, President, Kentucky Pork Association

What is the basis for the requirement for permanent litter storage for poultry CAFOs?

(b) Response: See response to comment #s 125 and 126.

(130) Subject: Poultry Litter as an Organic Fertilizer

(a) Comment: Glenda Preston, Poultry Farmer

Kimberly Boswell, Poultry Farmer, Nurse

James Denton

Bill Payne, Dairy Producer, Kentucky Milk Producer's Association

Jerry Whitledge, Farmer

Dudley Cooper, Ohio County Judge Executive

Carole Knoblett, Kentucky Poultry Federation

Jim Koostra, Farmer

Terry Rhodes, President, Kentucky Corn Growers Association

Donnie Duncan, Pastor & Chicken Farmer

Angela Leach, Farmer

Nancy Butler, Farmer

Jennifer Nelson

Meldrum Harvey, Retired Physician & Farmer

John Warren, Farmer

Jerry Lock, Poultry Farmer

Greg Hefton, Poultry Farmer

Wesley Slaton, Farmer

Alvin Sandefur, Farmer

Hayward Spinks, Ohio County District Foundation

David Herron, Pilot & Poultry Farm Owner

Ronnie Bloecher, Poultry Farmer

Animal waste is a natural resource that can economically replace synthetic fertilizers. The proposed regulations will discourage the use of livestock manure in crop production.

Farmers spread fertilizer on pastures as an organic fertilizer, give some to neighbors, and sell some to local grain farmers. Farmers have filled out and comply with Ag Water Quality Plans.

(b) Response: The Cabinet is not discouraging the use of litter as a supplement to, or, replacement for commercial fertilizers. The regulation does not affect how animal waste is utilized by neighbors or local grain farmers who purchase such. Those individuals must handle animal waste in accordance with the Agriculture Water Quality Plan. This regulation only affects how operations defined as CAFOs operate. See response to comment # 73. This represents a very small universe of farming operations in Kentucky.

(131) Subject: Poultry Litter as an Organic Fertilizer

(a) Comment: Wesley Slaton, Farmer

If these regulations are enacted, I will not be able to donate poultry litter to the school. I would have to do what the poultry company tells me to do with it. I do not want someone else telling me where to put it or what to do with it.

(b) Response: The regulations would not prohibit donating poultry litter to the school. With respect to having the company (or integrator) dictate how litter is to be handled, that is dependent upon the contract between the company and the producer. The regulation simply states that the integrator and the producer would share environmental liability of the CAFO operation, provided Section 1 of the proposed regulation applies.

(132) Subject: Poultry Litter as an Organic Fertilizer

(a) Comment: Mike Latta
Nancy Butler, Farmer

The land I purchased was set aside ground. The application of litter has greatly improved the quality and volume of grasses and I have a waiting list of people to buy hay. Why is natural fertilizer causing a problem when tons of commercial fertilizer are being applied and not considered a problem.

(b) Response: The application of litter, if properly done, can be an excellent fertilizer for grasses. The Cabinet recognizes the potential problems associated with inappropriate application of commercial fertilizer, but this regulation does not address that issue. This regulation only addresses operations which are defined as CAFOs. Both manure and commercial fertilizer however, are to be handled in accordance with the Agriculture Water Quality Plan.

(133) Subject: Poultry Litter as an Organic Fertilizer

(a) Comment: Greg Henson, McLean County Extension Agent

I am conducting a project entitled "Implementation and Demonstration of BMPs for the Utilization of Poultry Litter in the Lower Green River Watershed". Our preliminary conclusions are: 1) There was no appreciable difference in runoff from manure versus conventionally fertilized fields; 2) There was no clear trend in fecal bacterial levels where manure was used compared to conventionally fertilized fields; 3) There was no apparent trend in nutrient content of runoff when compared to different rates of manure; and 4) Higher levels of nutrient runoff were related to soil erosion. These results clearly indicate that nutrient content of animal manure is equal to conventional fertilizer. Good farming practices which conserve soil are the most important way to protect water quality.

(b) Response: The Cabinet agrees that good farming practices which conserve soil are a very important means of protecting water quality. Providing buffers or filter strips are similarly necessary to prevent the migration of excess nutrients into waters of the Commonwealth. Restricting application of manure around streams, sinkholes, and other waterbodies, by way of setbacks, are also necessary requirements to prevent degradation to waters of the Commonwealth.

(134) Subject: Poultry Litter as an Organic Fertilizer

(a) Comment: David Herron, Pilot & Poultry Farmer

How much litter can farmers spread per acre?

(b) Response: The application rate of poultry litter will vary depending upon a variety of factors. Soil and manure nutrient content must be known to prevent the application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and prevent pollution. Among other factors, the use of commercial fertilizers must be factored into the application rate. In some instances, the addition of poultry litter may be prohibited altogether as a result of Natural Resource Conservation Service (NRCS) standards and specifications. Each farm will need to be evaluated on a case by case basis.

(135) Subject: Animal Waste as an Organic Fertilizer

(a) Comment: Bud Hixson, Kentucky Waterways Alliance

The Cooperative Extension Services publications IP-56 and AGR-168 have identified some counties where animal waste nutrient supplies a high percentage of the crop needs of phosphorus, yet all of the animal waste is not being properly distributed. The Kentucky agricultural statistics must begin to report animal waste as a farm side product.

(b) Response: The Cabinet acknowledges the comment and directs the commentor to the Department of Agriculture for further consideration.

(136) Subject: Animal Waste as an Organic Fertilizer

(a) Comment: Tom Fitzgerald, Kentucky Resources Council

Dot Holbrook, Resident

Debby Allen

Aloma Dew, Sierra Club

Joan Denton, Sierra Club & KFTC

Sue Whyne

Animal waste is a natural resource and in excessive quantities it is a pollutant. When more litter is applied than is needed, nutrients can contaminate surface and groundwater. Match the nutrient content of the waste to the nutrient needs of the soil or the crops that are being grown. Manure management plans and groundwater monitoring should be required. How is the spreading of poultry manure being monitored? Who says it's time to stop? Where are the safeguards?

(b) Response: See response to comment # 134. An operation which is defined as a CAFO will be required to obtain a KPDES permit for that operation. As a part of that permit, the operation will be required to develop a Comprehensive Nutrient Management Plan (CNMP) for the management of animal waste generated and handled on that operation. That would include monitoring. The Cabinet is responsible for enforcement and compliance oversight with the permit conditions.

(137) Subject: Animal Waste as an Organic Fertilizer

(a) Comment: Aloma Dew, Sierra Club

Who has ownership and responsibility of the litter after it leaves the grower?

(b) Response: The ownership and responsibility of the litter after it leaves the grower would fall to the individual who is subsequently in control of that litter. The CAFO need only to record when litter leaves the operation. The handling of that litter is to be done in accordance with the Agriculture Water Quality Plan, in addition to any applicable state regulatory requirement.

(138) Subject: Animal Waste as an Organic Fertilizer

- (a) Comment: Monroe Rasnake, Extension Agronomy Specialist, University of Kentucky
Alan Lutz, Swine Farmer

Millions of acres of pasture land in Kentucky would benefit greatly from the nutrients contained in Manure. The availability of manure may make it economically feasible now for farmers to fertilize pasture fields, making them more productive and improving the quality of soils, improving water infiltration and reducing the risk of soil erosion. Perhaps an alternative in some of the setbacks is a reduced frequency of application. Use of animal manure is an economical, environmentally sound practice when using best management practices.

(b) Response: See response to comment # 133. The Cabinet concurs that the proper use of animal manure is an economical, and environmentally sound practice when using best management practices. Among these BMPs should be setbacks. The requirement of setbacks is also consistent with both Agriculture Water Quality Plan BMPs and NRCS specifications regarding the same.

(139) Subject: Animal Waste as an Organic Fertilizer

- (a) Comment: Alvin Sandefur, Farmer

I can be much better steward of the land and water by spreading on dry land at 40 days from stacking rather than being forced to spread on wet land at 30 days and risk surface runoff.

(b) Response: The Cabinet agrees that the application of manure on dry land is better environmentally than application on wet land. To that end, the Cabinet is not proposing or forcing any operation to spread manure on wet land. The requirement for permanent litter storage, for example, provides for a greater degree of flexibility in land application than does stockpiling of litter outside.

(140) Subject: Animal Waste as an Organic Fertilizer

- (a) Comment: Kenneth Lee

I want farmers to prosper, but I oppose spreading manure. It should be injected to manage the odor.

(b) Response: The Cabinet is not proposing to mandate that all manure be injected. The Cabinet does recognize the use of this land application method in the setbacks however. Certainly odor concerns are greatly mitigated in this manner.

(141) Subject: Dead Animals

- (a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
Aloma Dew, Sierra Club
Norma Reynolds

Dead animals must be addressed in the regulation. In the past, operators have burned dead chickens and stored dead chickens in barrels. This is a health issue. Who pays for the problems?

(b) Response: Dead animal issues are regulated by the State Veterinarian pursuant to state statute KRS Chapter 263.

(142) Subject: Violations and Corrective Action

- (a) Comment: Rebeckah Freeman, Director, Natural Resources, Kentucky Farm Bureau

Neither the emergency regulation nor the draft permits describe a process for notice of violation, fine schedules, or corrective action. We suggest corrective action provisions similar to those in the Agriculture Water Quality Act be included in the regulation.

(b) Response: The Cabinet's administrative regulations regarding the federal Clean Water Act do not generally set out these requirements. Processes for citing violations and setting civil penalties are found in KRS Chapter 224.

(143) Subject: Profitability of Family Farm

(a) Comment: Billy Ray Smith, Commissioner, Kentucky Department of Agriculture
Ira Linville, Environmental Specialist, Kentucky Department of Agriculture

Under CAFO regulations, Kentucky agriculture, especially small producers, will be restricted from new or expanded income-producing animal operations, adversely affecting the growth of Kentucky's agricultural economy and negatively affecting the potential to increase profitability of farmers.

(b) Response: The Cabinet is well aware of the need for a strong farm economy in Kentucky. The Cabinet does not intend to harm the profitability of farmers, who will only be affected if they increase enough to be considered a CAFO. See also responses to comments # 72 and 73.

(144) Subject: Profitability of Family Farm

(a) Comment: Glenda Preston, Poultry Farmer
Jerry Whitedge, Farmer
Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
John Warren, Farmer
Danny Payne
Mark Turner, Farmer
Wesley Slaton, Farmer
John and Rickie Shocklee, Farmers
Hayward Spinks, Ohio County District Foundation
Chris Clark, Poultry Farmer

With money lost from tobacco, farmers may not be able to find a decent job and may not be able to stay on the farm. Diversification into the chicken business has enabled many family farms to succeed where they probably would have gone out of business. Farmers are trying to stay competitive and should be treated fairly. We're sending out a bad signal for the future growth of any business.

(b) Response: The Cabinet recognizes the need for farmers in Kentucky to diversify their operations in light of lost tobacco income. The Cabinet is well aware of the need for a strong farm economy in Kentucky. The Cabinet does not intend to harm the profitability of farmers. The Cabinet is charged with protecting human health and the environment.

(145) Subject: Profitability of Family Farm

(a) Comment: Teddy Hicks, Poultry Farmer

I built six poultry houses to save my farm and I wonder now with all these regulations, if I'm going to save it or still lose it.

(b) Response: The Cabinet does not intend to harm the profitability of farmers. The Cabinet is charged with protecting human health and the environment.

(146) Subject: Profitability of Family Farm

(a) Comment: Donnie Duncan, Pastor & Chicken Farmer

We do not have enough mentors in this nation. I have the opportunity to give children hope that if they work hard, save and manage what they have, they too can receive the American dream. Many jobs were lost with regulation of the mining industry. By imposing additional regulations, you are impeding my ability to keep my operation at a profitable level.

(b) Response: The Cabinet does not intend to harm the profitability of farmers, who will only be affected if they increase enough to be considered a CAFO. The Cabinet is charged with protecting human health and the environment.

(147) Subject: Profitability of Farming

(a) Comment: Mike Ovesen, Executive Director, Kentucky Pork Producers
David McCollough, Vice President of Financial Services, Farm Credit
Services of mid-America

In 1985 the farm bill was designed by the U.S. Congress, knowing that it would eliminate 65% of U.S. farmers. Family food costs decreased but many small farmers were eliminated. Agriculture is being manipulated by outside interests, whether government or activist groups. The new emergency regulation coincides with the two most unprofitable years in the history of the swine industry and dramatic cuts in tobacco acreage. These new regulations amount to a taking away of property.

(b) Response: The Cabinet had no control over the 1985 Farm Bill, the recent down years in swine prices, or tobacco cuts. This regulation is addressing the risks to human health and the environment and is unrelated to other farm issues. Valid regulation of an industry does not result in the taking of property.

(148) Subject: Profitability of Farming

(a) Comment: Tim Hughes, Producer

How are these regulations going to help the small producer when costs are being added to the production of a unit and no other state has these things in place? It's going to reduce the amount of money the producer gets from the contracts.

(b) Response: Several states have setbacks in place for large animal feeding operations. Kentucky is not the first to attempt to develop or enforce setbacks for these operations. The Cabinet does not intend to harm the profitability of farmers, who will only be affected if they increase enough to be considered a CAFO. Following EPA's recommendation, all states will need to adopt similar regulations on CAFO's. See also response to comment #29.

(149) Subject: Profitability of Farming

(a) Comment: Roger Osburn, Chicken Grower

I don't want to be a small family farm. I want to be a farm that's able to provide for my family and my children and have something to leave them. I don't know if that is going to be possible. The biggest impact of these regulations will be to shut down the small operator. Food producers will go outside of the U.S. to be profitable. Shouldn't the person who owns the land have some rights?

(b) Response: The proposed regulations have no effect on operations that are not defined as a CAFO. This would generally be for poultry producers with more than 100,000 broilers. There

are numerous producers and contract growers that confine less than 100,000 broilers in Kentucky. The Cabinet does not intend to harm the profitability of farmers, who will only be affected if they increase enough to be considered a CAFO. The Cabinet is charged with protecting human health and the environment.

(150) Subject: Profitability of Farming

- (a) Comment: Frances Woosley, Farmer
Richard Mattingly, Farmer
Alan Lutz, Swine Farmer
Carla J. Creasey, Poultry Farmer

Farming is a lifestyle and we don't want to hurt our land. Our financial security and way of life is threatened by these proposed regulations. We all need regulations, but not so strict that you completely run the small family farm out of business. The regulations will make it tougher for the small and mid-sized producers. The large companies will survive and adapt while the rest of us may be forced to become employees of the mega producers.

(b) Response: The proposed regulations have no effect on operations that are not defined as a CAFO. This would generally be for poultry producers with more than 100,000 broilers. There are numerous producers and contract growers that confine less than 100,000 broilers in Kentucky. For swine, that would generally equate to more than 2500 feeder pigs. The majority of swine operations in Kentucky are smaller than this threshold. These regulations will not affect small producers who are not large enough to be a CAFO. The Cabinet does not intend to harm the profitability of farmers, who will only be affected if they increase enough to be considered a CAFO. The Cabinet is charged with protecting human health and the environment.

(151) Subject: Profitability of Farming

- (a) Comment: Nancy Butler, Farmer

This regulation would inhibit growth and expansion of my small farm. If I were to sell my operation, the value would be decreased.

(b) Response: This regulation would only apply to an expansion that increased the size of the operation to fall under the definition of a CAFO. There is some ambiguity as to the effect of CAFO's on property values. Some studies have shown that the existence of a CAFO increases value of property, while others have shown that property value is decreased.

(152) Subject: Profitability of Farming

- (a) Comment: Heather Roe Mahoney, Democracy Resource Center

We support state assistance for developing new markets and value added business requirements.

- (b) Response: Your comment is noted.

(153) Subject: Profitability of Farming

- (a) Comment: Joan Denton, Sierra Club, KFTC

What is the average life span of a typical poultry house? Does the local farmer have to continue to amass debt on top of debt in order to stay technologically current with integrator demands?

- (b) Response: This is outside the scope of this regulation.

(154) Subject: Profitability of Farming

- (a) Comment: Terry Rhodes, President, Kentucky Corn Growers Association

Elwood Butrum, Poultry Farmer
Al Pedigo, Farmer

The proposed regulations are detrimental to the current livestock and livestock feeding industries in Kentucky and place a cap on any future expansion or growth. Allow the livestock industry to expand and compete on fair terms with other states.

(b) Response: Based upon guidance from US EPA, all states will need to adopt similar regulations on CAFO's. See also response to comment #29.

(155) Subject: Profitability of Farming

(a) Comment: Norma Osburn, Farmer

Poultry farming has made it possible for us to stay on the farm, put food on our table, and clothes on our bodies. If not for farmers, you would not have food and clothes. True farmers abide by rules and regulations, protect our soil, and take great pride in what we do.

(b) Response: The agriculture industry is a contributor to the economy. This regulation is intended to protect human health and the environment.

(156) Subject: Local Economy

(a) Comment: Jerry Hobgood, Mayor, Sebree, Kentucky

Mike Latta, Poultry Farmer

Kimberly Boswell, Poultry Farmer

Jerry Whitledge, Farmer

Dudley Cooper, Ohio County Judge Executive

Jason Chinn

Steve Zea, President, West Kentucky Corporation

Carole Knoblett, Kentucky Poultry Federation

David McCollough, Vice President of Financial Services, Farm Credit Services of mid-America

Angela Leach, Farmer

Jennifer Nelson

Meldrum Harvey, Retired Physician & Farmer

Jerry Lock, Poultry Farmer

Greg Hefton, Poultry Farmer

Loraine Buckingham, Farmer

Wesley Slaton, Farmer

Charlene King, Clinton County Judge Executive

Raymond Highball, Lender

James A. Brown, Mayor, City of Albany

Chris Rodgers, Citizens Bank of Hickman, Kentucky

Hayward Spinks, Ohio County District Foundation

The poultry industry has created jobs. It is a reliable source of income. The poultry industry has created a more competitive grain market and reduced transportation costs with local grain elevators. The poultry industry has created many job opportunities for area citizens, increased the tax base substantially, replacing the tax base lost to the dwindling coal industry. Our farmers are now able to make a living and keep their family farms and quality of life. Property taxes have increased. Unemployment and welfare benefits have decreased. Economic growth has escalated. Complaints are few. The poultry companies have been good corporate citizens and have been

very supportive of educational and civic organizations. They provide health insurance. They provide jobs with good starting wages to people with little education and encourage employees to work toward GEDs.

As a result of the poultry industry's arrival in Kentucky, many infrastructure improvements have been made including new water and wastewater treatment plants. Loans to poultry farmers have not been delinquent and have been paid faster than expected. Lenders need assurance that operations will continue after the permitting period expires. The continuing success of poultry and the ability of farmers to expand are critical to our local economy. We must balance emotions with facts. What will the effects be on our local communities if these regulations are implemented?

(b) Response: The Cabinet is aware of the importance of the poultry industry to the overall agriculture economy in Kentucky. With this economic growth however, several human health and environmental issues have arisen. The intent of these regulations is to protect human health and the environment. The net effect of these industries in Kentucky is ambiguous, as it is a time of a growing economy. It is not practical to estimate what would have happened in the absence of this industry. Healthy environmental conditions are necessary to support industries as well, especially tourism.

(157) Subject: Local Economy

(a) Comment: Jean True, Resident

Susan Crosswait, Kentuckians for the Commonwealth

This year the University of Missouri released studies stating that swine and poultry operations may be depressing rural property value. Rural property in Saline County was devalued by \$2.68 million, an average of \$112.00 an acre for 99 property owners within three miles of CAFOs. Muhlenberg County found an 18% drop in value for dwellings that are close to poultry operations. One of my neighbors had his property devalued by neighboring poultry operations.

Other costs include the social cost of the kinds of jobs and the kinds of economic development that come with CAFOs. We get the bottom of the barrel in terms of jobs and worker safety. Temporary workers are employed with no health care benefits and substandard wages. Tax packages are given to these companies, another hidden cost. These subsidies could be given to independent farmers. It is hard to locate good, well paying industries in an area that is inundated with hog lagoons and chicken houses.

Studies have shown that every year hog factories put almost 31,000 farmers out of business. Between 1994 and 1996, approximately 4,400 family farmers were displaced by the expansion of the top 30 pork producing companies. This is an unfair situation to the contract operators and the people in the poultry plants. Put the additional costs on the corporations.

(b) Response: Your comment is noted. The Cabinet is aware of these studies and others that show both positive and negative effects on the economy from these operations. The intent of this regulation is to protect human health and the environment.

(158) Subject: Local Economy

(a) Comment: Liz Natter, Director, Democracy Resource Center

The health of lakes and waterways is essential to the tourism industry that is vital to Western Kentucky's economy.

(b) Response: Your comment is noted.

(159) Subject: Industrial Agriculture

- (a) Comment: Bill Payne, Dairy Producer, Kentucky Milk Producer's Association
Charles Miller, Farmer
Meldrum Harvey, Retired Physician & Farmer

Many dairy farms currently milk 100 or 200 cattle. In order to produce milk in a manner that's rewarding environmentally and economically, dairies will have to increase in size. Livestock production, including increasing the scale of operations, should be viable alternatives. Dairies need the flexibility to engineer a design to fit specific sites.

Why are we afraid to let agriculture expand? Without CAFOs one could not produce the meat products at a price that any of us could afford. If we destroy that industrial base as farmers, we have destroyed our livelihood.

(b) Response: The Cabinet is aware of the expanding nature of individual farm size in Kentucky, and across the nation. For a dairy or beef operation to be defined as a CAFO, generally there would need to be more than 700 dairy or 1000 beef, respectively, confined on the operation. Some beef operations in Kentucky, for example, maintain more than 1000 head of beef, but do not do so in a confined manner. Any proposed permanent regulation will not be designed so as to prevent future expansions. Any regulatory requirements for CAFO's will only be those needed to protect human health and the environment.

(160) Subject: Industrial Agriculture

- (a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee
Debby Allen

The poultry industry should be regulated as an industrial, not an agricultural operation. Farmers may be saving the land of their grandfathers, but a confined animal feeding operation is not your grandfather's farming.

(b) Response: Any proposed permanent regulation will not use "industrial" versus "agricultural" distinctions as a method of determining who is subject to the requirements nor will that distinction be used to select what criteria may apply to a CAFO.

(161) Subject: Industrial Agriculture

- (a) Comment: Tom Fitzgerald, Kentucky Resources Council
Aloma Dew, Sierra Club

Intensive livestock operations are a component of a system of industrial production through an integrated structure of companies, investors and contractors. Under the contract model, farm-level control over agricultural production decisions is replaced by corporate control through the contracts, relegating farm-level workers to the role of hired labor. The environmental and human health costs associated with these industrial scale operations and the management of the wastes and wastewaters generated by these facilities must be fully accounted for by the facilities and those who control the production decisions. If environmental damage occurs, if neighbors lose value and enjoyment of their homes and properties, if the communities suffer pollution, it should not be the contract farmer that bears the entire cost of remedying whatever problems might arise. Integrator liability is essential to protect our farmers who are fighting to stay on the land but are placed in the position of having to pay all the costs involved in meeting environmental and legal requirements.

(b) Response: The Cabinet has proposed to specifically incorporate integrator liability provisions in the proposed regulation. This was done consistent with federal guidance, and in order to address potential environmental problems that may arise on a given operation.

(162) Subject: Farm Policy

(a) Comment: Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Does this regulation allow the Cabinet to regulate and manipulate the economic structure of livestock and poultry producers in Kentucky? That is not the charge of the Cabinet.

(b) Response: No, the Cabinet is not proposing to manipulate the economic structure of the livestock or poultry industry in Kentucky. The proposed permanent regulation for CAFO's will only address the environmental aspects of those operations.

(163) Subject: Farm Policy

(a) Comment: James Duff, Poultry Farmer

Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau
Farmers provide food to the needy. Last week the U.S. Secretary of Agriculture said that the current farm policy is not working. Record low prices and natural disasters made 1999 one of the toughest years ever for the American farmers. The choices you make will have significant long-term effects on an industry that is already experiencing tough times and an uncertain future.

(b) Response: Please refer to the responses provided to comments #159 and #162.

(164) Subject: Let's Work Together

(a) Comment: Marshall Coyle, Farmer, First Vice President, Kentucky Farm Bureau

Charles Miller, Farmer
Tim Hughes, Producer
Joe Walker, Producer
Steve Zea, President, West Kentucky Corporation
Sam Moore, Farmer
James Denton
Al Pedigo, Farmer
Charles Anderson, Farmer
Richard Mattingly, Farmer
Loraine Buckingham, Farmer
Ronnie Bloecher, Poultry Farmer

We ask that the Cabinet work with Kentucky Farmers to protect the environment and allow Kentucky farmers to make a decent living. Make these regulations something we can all live by. Let those with an interest in what is right for Kentucky be included in the process. Agriculture must be responsible for the practices we employ and ensure that they protect our environment. We support reasonable common sense guidelines, yet if we take controls too far, we impact the economy. Let's remember balance and work together to do the right thing.

(b) Response: The Cabinet has received a broad range of input from interests on all sides of this issue including citizens, commodity groups, business organizations, environmental groups, local government, academic institutions, and various state and federal government agencies. The Cabinet appreciates the willingness of these various interests to work toward the development of reasonable environmental regulations. However, it has been very difficult to reach broad consensus among the various interests. Given the wide range of technical options

and public opinion on these issues, the Cabinet maintains that the proposed administrative regulations provide appropriate protection of human health and the environment.

(165) Subject: Let's Work Together

(a) Comment: Judith A. Villines, Attorney, Tyson Foods, Inc.

Judith A. Villines, Attorney, Perdue Farms, Inc.

Withdraw this regulation, which is fraught with legal problems, and work with the poultry producers and growers within the state to arrive at a solution allowing the small poultry farmers of Kentucky to thrive while not compromising environmental quality.

(b) Response: See response to comment #164.

(166) Subject: Let's Work Together

(a) Comment: Joe Nepi, Chairman, Doe Valley Environmental Resource Committee

I commend the folks in Kentucky for holding public hearings at this point in time. In my study of other states, I found they did not do that until it was too late. Long term planning deals not with future decisions, but with the future of present decisions. Lets work cooperatively.

(b) Response: The Cabinet acknowledges the comment.

(167) Subject: Let's Work Together

(a) Comment: Billy Ray Smith, Commissioner, Kentucky Department of Agriculture

Ira Linville, Environmental Specialist, Kentucky Department of
Agriculture

If regulations are to be developed, let's do it as a team including agriculture, environmentalists, regulators, and technical assistance agencies, using the best technology to meet the needs of the environment and help our farmers survive. I commit the resources and the staff of the Kentucky Department of Agriculture to assist in such an effort.

(b) Response: See response to comment #164.

Summary of Notice of Intent Statement of Consideration and Action Taken

The Natural Resources and Environmental Protection Cabinet (NREPC), Division of Water received comments from 107 individuals or organizations. 291 people attended the public hearings.

The Cabinet reviewed the comments, and in response, is filing this Notice of Intent Statement of Consideration and the proposed new administrative regulation that is the subject of the Notice of Intent. The ordinary regulation differs from the emergency administrative regulation by allowing poultry concentrated animal feeding operations until October, 2001 to provide permanent litter storage structures (Page 7, Section 4(1), lines 4-5). The proposed rule clarifies that siting criteria do not apply to permanent litter storage structures on poultry CAFOs in existence prior to February 14, 2000 (Page 7, Section 4(2), lines 6-8). The Regulatory Impact Analysis has been revised to consider public comments on the Notice of Intent.

The proposed administrative regulation will be published in the June *Administrative Register of Kentucky (Register)* and will be the subject of a public hearing June 29, 6:30p.m. Central Standard Time at the Madisonville Technology Center Byrnes Auditorium, 750 North Lafoon Drive, Madisonville, Kentucky.